

# The H-2B Home Stretch!

Filing for H-2B Workers with USCIS, Visa Processing and H-2B Compliance Files

February 14, 2023

**Fredrikson**

*Where Law and Business Meet®*



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# Welcome

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# Panel Introductions

# Agenda

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Introductions

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H-2B Cap – Where are we now?

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Who Can H-2B Employers Sponsor on Form I-129 H-2B Petition

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Unnamed vs. Named Beneficiaries

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Supplemental H-2B Visas for Fiscal Year 2023

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Consular Processing

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H-2B Compliance

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# Presenters



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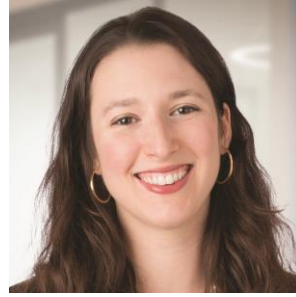
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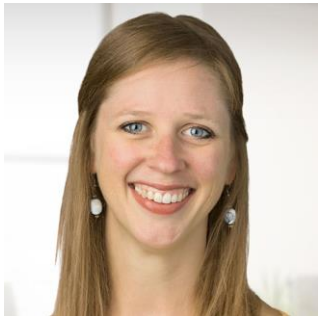
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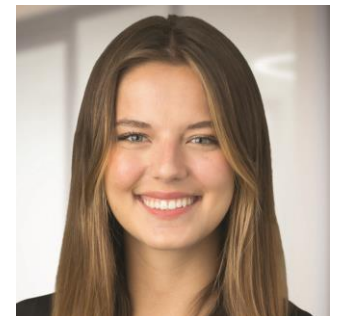
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# The H-2B Cap: Where are we now?

<https://flag.dol.gov/processingtimes>

updated as of close of business 2/11/2023

Applications Received for Requested Date of Need from April 1, 2023 through September 30, 2023

	STEP 1	STEP 2	STEP 3	STEP 4	
Filing Window	Total Cases Submitted <sup>3</sup> & Positions Requested	Total Cases Issued NOA or NOD	Percent Issued a First NOA or NOD	Total Cases Pending - Post NOA or NOD Issued <sup>4</sup>	Total Cases Issued Final Decision & Positions Certified
Jan 1-3 Group A	2,091 (33,832 Workers)	2,091	100%	731 (11,981 Workers)	1,360 (21,667 Workers)
Jan 1-3 Group B	1,163 (19,191 Workers)	1,135	97.6%	1,135 (18,411 Workers)	--
Jan 1-3 Group C	1,286 (19,351 Workers)	--	--	--	--
Jan 1-3 Group D	1,173 (19,218 Workers)	--	--	--	--
Jan 1-3 Group E	1,122 (19,150 Workers)	--	--	--	--
Jan 1-3 Group F	1,115 (19,066 Workers)	--	--	--	--
Jan 1-3 Group G	334 (5,854 Workers)	--	--	--	--

# Who Can H-2B Employers Sponsor Once Certified by DOL?

## H-2B Visa Cap Not Met

- Foreign Nationals outside of U.S.
- H-2B Workers exempt from cap

## Any Time

- H-2B Workers exempt from cap
- H-2B Workers already counted against cap & outside of U.S.

## 15 days or more after H-2B Visa Cap Met

- Employer has start date between April 1 and May 14
- Returning H-2B workers (held H-2B status in one of the last 3 fiscal years)
- Workers from Northern Triangle countries (El Salvador, Guatemala & Honduras) or Haiti

# Who Can H-2B Employers Sponsor?, continued...

## 45 days or more after H-2B visa cap met

- Employer has start date between May 15 and September 30
- Returning H-2B workers (held H-2B status in one of the last 3 fiscal years)
- Workers from Northern Triangle countries (El Salvador, Guatemala & Honduras) or Haiti

## Maximum stay in H-2B status

- H-2B workers can remain in the U.S. for up to 3 years and then must be outside of the U.S. for 3 consecutive months
- Can only be with each employer for length of ETA 9142B certification
- Can work with H-2B employers in an opposite season to bring workers that have already counted in the FY 2023 cap



# Information Required on I-129 Petition – Unnamed Beneficiaries vs. Named Beneficiaries

## Unnamed

- Outside of U.S.: consular processing & don't need to show that the worker was counted in the cap
- Need city/ies and country/ies where workers will apply for H-2B visa

## Named

- Inside the U.S.: Transferring from another employer
- Outside of U.S., consular processing & need to show that the worker was counted in the cap

# Fredrikson Tracker Portal



View beneficiaries' information & documents



Employer or H-2B Worker complete questionnaire



Upload documents for beneficiaries to Tracker

# Supplemental H-2B Visas for Fiscal Year 2023

64,716 Fiscal  
Year 2023  
supplemental  
H-2B visas

- **20,000** for nationals of Northern Triangle countries (El Salvador, Guatemala & Honduras) or Haiti
- **18,216** for returning H-2B workers in first half of Fiscal Year 2023 (*already used up*)
- **16,500** for returning H-2B workers for employment start date of April 1, 2023 to May 14, 2023
- **10,000** for returning H-2B workers for employment start dates of May 15, 2023 to September 30, 2023

# Supplemental H-2B Visas – Irreparable Harm & Recruitment

## IRREPARABLE HARM

- Executed work contracts
- Work orders, reservations, or other business arrangements
- Financial records
- Payroll records or earnings statements
- Evidence of reliance on a certain number of workers to operate, based on the nature and size of the business
- Other types of evidence demonstrating irreparable harm

## COVID-19 COMPLIANCE

- Comply with all Federal, State, and local employment-related laws and regulations re: COVID-19 worker protections
- Right to time off or PTO for vaccination or reimbursement for travel for vaccination
- Notify H-2B workers, in a language workers understand, that all persons in U.S. have equal access to COVID-19 vaccines & vaccine distribution sites

## RECRUITMENT

- i. SWA Job Order
- ii. Post a Notice of Job Opportunity in 2 locations at worksite or on company's internal or external website OR notify the Collective Bargaining Agent of the job opportunity
- iii. Notify any former U.S. workers that held the position in the last year
- iv. Notify current U.S. workers of the job opportunity and request assistance in recruiting qualified U.S. workers for the job
- v. Contact American Job Center regarding the job opportunity
- vi. Contact the nearest AFL-CIO office
- vii. Accept & interview U.S. applicants
- viii. Complete Final Recruitment Report

# Consular / Visa Processing for H-2B Workers Who are Outside the U.S.

## Applying for the H-2B Visa

- DS-160
- U.S. Consulate

## Employers Must Pay for Visa and Travel Fees

- Visa related fees
- Travel from home residence to U.S. consulate and to U.S.
- Daily subsistence when traveling to U.S. from place of residence



# H-2B Compliance

## Final Recruitment Report

- Recruitment period ends 21 days prior to the employment start date
- If you received additional U.S. applicants since filing the Initial Recruitment Report, it will be noted on the Final Recruitment Report
- A final disposition must be made on each U.S. applicant before completing the Final Recruitment Report

## Payroll Records

- Must have address of home residence
- Hours offered and hours worked
- Deductions
- FEIN

## DOL Posters

- Rights of H-2B employees

## Notifications to DOL and USCIS if any employees depart early

- DOL = [TLC.Chicago@dol.gov](mailto:TLC.Chicago@dol.gov)
- USCIS = [CSC-X.H-2BABS@dhs.gov](mailto:CSC-X.H-2BABS@dhs.gov) or [VSC.H2BABS@uscis.dhs.gov](mailto:VSC.H2BABS@uscis.dhs.gov)

# H-2B Compliance

Reimbursements / payments for travel from and back to home country and subsistence documented

## Maintenance of Audit File

- Maintain H-2B records for three years

## Common Violations

- Improper deductions
- Perform duties outside scope of ETA 9142B
- Wage-related violations
- Improper rejection of U.S. workers
- Preferential treatment of H-2B workers over U.S. workers

# Q&A?



# Thank you!

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