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## USCIS Reaches H-2B Cap for Second Half of FY 2023, Announces Filing Dates for Supplemental Visas

**Legal Update**

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*This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.*

U.S. Citizenship and Immigration Services (USCIS) announced on March 2, 2023, that it has received enough petitions to meet the congressionally mandated H-2B cap for the second half of fiscal year (FY) 2023. USCIS also announced the filing dates for supplemental H-2B visas for the remainder of FY 2023 made available under the FY 2023 H-2B supplemental visa temporary final rule.

### H-2B Cap for Second Half of FY 2023

February 27, 2023, was the final receipt date for new cap-subject H-2B worker petitions requesting an employment start date on or after April 1, 2023, and before October 1, 2023. USCIS continues to accept H-2B petitions that are exempt from the congressionally mandated cap, including petitions for:

- Current H-2B workers in the United States who wish to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam (until December 31, 2029).

### Filing Dates for Supplemental Visas

The Departments of Homeland Security (DHS) and Labor (DOL) jointly published a temporary final rule on December 15, 2022, increasing the numerical limit (cap) on H-2B nonimmigrant visas by up to 64,716 additional visas for all of FY 2023. These supplemental visas are available only to "U.S. businesses that are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all the H-2B workers requested in their petition," USCIS said, as attested by the employer on DOL Form ETA 9142-B-CAA-7. These supplemental H-2B visas are

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for U.S. employers seeking to petition for additional workers at certain periods of the fiscal year before September 15, 2023.

The USCIS alert details the filing start dates for each of the remaining supplemental visa allocations under the temporary final rule.

USCIS previously announced that it had received enough petitions to reach the cap for the additional 18,216 H-2B visas made available for returning workers for the first half of FY 2023 with employment start dates on or before March 31, 2023.