

U.S. Employers: H-1B Registration Process for Fiscal Year 2024

February 3, 2023

UPDATE: Employers seeking to sponsor candidates for initial H-1B sponsorship should note that the H-1B electronic registration dates have been announced by U.S. Citizenship and Immigration Services (USCIS). USCIS has announced that the H-1B electronic registration period will open at 12 p.m. EST on March 1, 2023, and run through 12 p.m. EST on March 17, 2023. During this period, employers may submit registrations for any employees they wish to sponsor for initial H-1B employment authorization. Employers who have not previously created an account with USCIS for this purpose will be able to do so, beginning at 12 p.m. EST on February 21, 2023. USCIS intends to notify account holders of selected registrations by March 31, 2023. However, USCIS could make employers aware of selected registrations before this date, after the registration period has closed.

It is important that employers notify Miller Canfield immediately if they wish to file H-1B CAP petitions. Please contact the authors of this alert for further assistance.

H-1B CAP Electronic Registration Process

Employers seeking to sponsor candidates for initial H-1B sponsorship (commonly known as "H-1B CAP") should begin preparing for the H-1B electronic registration process. Although the U.S. Citizenship and Immigration Services (USCIS) has not announced the exact dates for electronic registration, previous registration periods have opened for three weeks during March, with employers notified of their selections shortly after the registration period has closed.

Here is a non-exhaustive summary of the H-1B CAP registration process:

- During the open registration period, employer registrants must create an online account with USCIS and register both the employer's corporate information (if not completed previously) as well as the information of the employee for whom the employer will sponsor. USCIS will assign each employee a unique registration number.
- USCIS requires a \$10 non-refundable fee for each employee registration submitted, with payment available only through <https://www.pay.gov/public/home>.
- For each employee to be sponsored, employers must provide the employee's legal name, gender, date of birth, country of birth and citizenship, and passport number, and must state whether the beneficiary has a master's degree or higher from a U.S. institution of higher education (making the beneficiary eligible for the advanced degree exemption).
- At the time the electronic registration is submitted, the employer's authorized signatory must certify, under the penalty of perjury, that the information provided in the registration is accurate and complete, and that the employer intends to file an H-1B petition on behalf of the named employee if selected.
- Although the dates of the electronic registration have not yet been announced, the registration will be open for a minimum of 14 days in March. During this period, employers may submit registrations for any employees they wish to sponsor. USCIS will announce the actual end date of the registration period on its website based on the number of registrations that it has received. Last year, the initial registration period was open from March 1, 2022, to March

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18, 2022.

- **At the end of March, only days after the registration period closes,** USCIS will conduct a random selection process from all properly submitted electronic registrations and will notify employers (and their designated representatives) by e-mail or text message of their selected registrations. Employers' online accounts will be updated with a selection notice for each employee registration selected so the employer can file an H-1B CAP-subject petition on behalf of the individual named in the notice. Petitions must be filed in accordance with the filing period stated on the notice.
- If USCIS receives more than enough registrations to meet the regular and advanced degree H-1B CAP allotment, all registrations that were not selected in the lottery will remain on a waitlist, indicating a status of "submitted." USCIS will select from those registrations that are on the wait list to meet the numerical allotment only if necessary.
- Employers with selected registrations may begin filing H-1B CAP petitions **on April 1, 2023**, and will be given **at least 90 days from the date of a registration selection** to file the H-1B CAP petition. USCIS will adjudicate petitions **in the order in which they are received**.
- USCIS will not consider a cap-subject H-1B petition to be properly filed unless it is based on a valid, selected registration for the same employee and the appropriate fiscal year, unless the registration requirement is suspended.
- Attorneys may submit registrations on behalf of employers, provided a Form G-28 is submitted on behalf of the employer.
- A Labor Condition Application (LCA) is not required to be completed prior to the electronic registration process, but if the employee's registration is selected, the employer must include a certified LCA with the H-1B petition filing.
- Employers requesting F-1 change of status on behalf of an employee who requires "cap-gap" protections, must file the H-1B CAP petition **BEFORE the employee's optional practical training (OPT) expires**, irrespective of the 90-day filing timeframe allotted to file the H-1B CAP petition upon receiving notification of the registration selection.
- USCIS has not yet announced whether premium processing will be available for H-1B CAP petitions.

USCIS will post step-by-step instructions on how to complete the registration process, along with key dates and timelines, on its website as the initial registration period nears. Given the upcoming registration period, it is important that employers notify Miller Canfield immediately if they wish to file H-1B CAP petitions. **Miller Canfield must conduct a complete and thorough evaluation of the employee's eligibility for H-1B CAP sponsorship, and register the employer under the electronic registration process, prior to the opening of the initial registration period in March.** Updates to the H-1B CAP registration process are ongoing, and we will continue to provide new information as it becomes available.

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If you have questions about the H-1B CAP process or other immigration matters, please contact your Miller Canfield attorney or one of the authors of this alert.