

## USCIS Outlines Tougher Requirements for Third-Party Placement for H-1B Workers

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Reporting requirements for employers increased this week with regard to third-party placement of H-1B foreign workers. Previously, United States Citizenship and Immigration Services (USCIS) required H-1B employers to provide evidence of employment relationships with vendors and end-clients where H-1B workers are placed. However, a newly released memo indicates that USCIS will have the discretion to scrutinize these contractual relationships even more so than before.

The memo, "Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites," outlines requirements for H-1B employers to provide detailed information regarding third-party placement of H-1B foreign workers.

Specifically, H-1B employers will be required to submit contracts, itineraries, and additional detailed information from end-clients covering the entire requested period of employment. Failure to do so may result in burdensome requests for evidence, heightened risk for denials and/or approvals with shortened validity periods.

The memo outlines specific guidelines for contracts and itineraries to be used in H-1B petitions that will suffice to demonstrate that the H-1B foreign worker will be employed in a specialty occupation and that the requisite employer-employee relationship will continue for the duration of the requested validity period.

USCIS also outlined new requirements for filing H-1B extensions where the foreign worker was previously placed on a third-party assignment. The employer must include additional evidence documenting not only future third-party assignments but also for past third-party placements. Such evidence will include proof that the H-1B foreign worker was employed in the sponsored specialty occupation, he or she was paid the required wage listed on the certified Labor Condition Application, and that the employer maintained the employer-employee relationship during the course of the prior employment. Failure to provide proof of compliance during prior authorized H-1B employment periods could result in negative consequences on subsequent H-1B extension petitions.

The new guidelines, issued on Feb. 22, 2018, took effect immediately on all H-1B petitions, including the upcoming H-1B cap-subject petitions for Fiscal Year 2019.

Employers should work with their Miller Canfield immigration attorney to determine a plan for providing sufficient evidence to comply with the heightened requirements resulting from the memo.