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H-1B Cap Filings: Last Year of Current Process Officially Set

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It is time for employers to prepare H-1B filings for workers who have not held H-1B status before and are subject to the annual cap on visa numbers. The filings need to be submitted on April 1 to USCIS with full documentation and following a preliminary Labor Department filing and approval, as in prior years. Work needs to begin promptly to prepare those filings.

USCIS has just announced a final rule to change the process in two ways. A change set to take effect for this year's April filings will reverse the order in which USCIS selects H-1B petitions under the "regular" cap and the advanced degree cap. Lawsuits about this change are expected, given that the change arguably violates the literal words of the statute, and such litigation might delay the announcement of results of the April H-1B lottery.

Another change would allow employers to file only a short electronic notification to USCIS identifying a proposed worker and occupation, so that full documentation would be prepared and submitted only for those selected in the lottery. While this sounds good to save costs for employers, commenters expressed many concerns about unintended consequences. USCIS is delaying implementation of this change until the April 2020 round of filings, so this year employers must file full documentation in April as in the past.

President Trump has made an enigmatic tweet suggesting more radical changes that could affect H-1B workers, but this might have been a high level and somewhat confused reaction to a report about the technical rule announced today. Or maybe something more significant is in the works.

USCIS has been imposing more demanding standards for what constitutes a "specialty occupation" and for the level of offered pay required to qualify for H-B. Several employers have brought litigation challenging those standards, but so far USCIS seems to be persisting with the tightened approach. USCIS has been applying difficult evidentiary standards for H-1B workers who would be assigned at customer locations.

Employers should use experienced immigration counsel to prepare H-1B petitions. For assistance in preparing your petitions, please contact the author, [Robert Divine](#), or any member of Baker Donelson's [Immigration Group](#).