

PUBLICATION

Limits on Duplicate H-1B Cap Filings

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The United States Customs and Immigration Service (USCIS) will prohibit and penalize multiple H-1B capped filings by an employer for the same worker but has left open multiple filings by different corporate entities with different legitimate needs for the same worker.

As expected (and urged by Baker Donelson's Immigration Group), USCIS has announced a new regulation seeking to discourage and penalize multiple filings for the same worker. If an employer files more than one petition for the same worker, upon discovery by USCIS, the petition will be rejected, denied or revoked, and USCIS will retain all the filing fees.

The caveat provided by USCIS includes the following language:

The rule does not prevent related employers (such as a parent company and its subsidiary) from filing petitions on behalf of the same alien for different positions, based on legitimate business need.

This exception leaves room for multi-layered companies with overlapping need for a worker to file separate petitions for the worker.

Employers wishing to examine options under this rule should contact a representative attorney from Baker Donelson's Immigration Group immediately. The effective deadline for such filings is April 1.