

ALERT

OCTOBER 13, 2010

LABOR AND EMPLOYMENT

News Concerning
Recent Labor and Employment Issues



IMMIGRATION ALERT

H-1B VISA AVAILABILITY:

The H-1B specialty occupation classification is a temporary visa category for workers in positions that require bachelor's or higher degrees in a specific specialty (or its equivalent) for entry into an occupation. Each fiscal year, the U.S. Citizenship and Immigration Services (USCIS) makes available a total 65,000 H-1B visas under the H-1B regular cap, with an additional 20,000 visas available for beneficiaries who have earned a master's degree or higher within the United States. Employers are allowed to file six months in advance of the beneficiary's proposed start date, thus employers typically begin filing petitions on April 1st for an October 1st start date.

In past years, the H-1B cap was often reached within the first week of visa availability. The economic downturn has decreased the volume of applications, thereby affording interested employers an opportunity to recruit outstanding talent later in the fiscal year.

As of October 1, 2010, the USCIS had received 40,600 petitions toward the fiscal 2011 H-1B regular cap of 65,000. In addition, the USCIS had received 14,900 petitions toward the H-1B master's cap of 20,000. Once the H-1B master's cap has been filled, all petitions that would have been considered under the master's cap will instead be counted against the regular cap.

We encourage you to contact us should you have graduates currently working on Optional Practical Training (OPT) that may need to be converted to H-1B within fiscal 2011, or if you are planning on hiring a foreign national within the next three months. While the H-1B cap remains open, it can and most certainly will fill before the end of 2010.

DIVERSITY VISA LOTTERY:

The 2012 Diversity Visa Lottery registration has begun, and will be open until noon on Wednesday, November 3, 2010.

The Diversity Immigrant Visa Program was designed by Congress to make immigrant visas available to individuals from countries

with low rates of immigration to the United States. No employer sponsorship is required for the diversity visa; however, diversity visa applicants must have at least a high school education or its equivalent or have, within the past five years, two years of work experience in an occupation requiring at least two years training or experience to qualify.

To apply, the individual must visit <http://www.dvlottery.state.gov/>, complete the required form and upload a passport photo. We are available to assist with this process and the subsequent required filings should the applicant be chosen in the lottery.

LEGISLATION UPDATE:

Implementation of Public Law 111-230 – Signed into law August 13, 2010, Public Law 111-230 (the so-called "Border Bill") increases the filing fees for H-1B and L-1 petitions for employers with a total of 50 or more employees, of which 50 percent or more are employed in H-1B or L-1 status. Employers who fall into this category will now be required to submit an additional fee of \$2,000 for each new H-1B petition, and \$2,250 for each new L-1 petition.

Although few employers have this proportion of temporary visa holders on payroll, the USCIS will now require evidence with each new filing that the petitioner is not subject to the new fee. As such, employers should be prepared to provide additional documentation to prove exemption from this fee. The USCIS is currently in the process of revising Form I-129, which is submitted with all H-1B and L-1 petitions, so that petitioners may easily attest as to whether they are subject to the additional fee.

For more information about employers' responsibilities in employment verification or other immigration matters, please contact Marcy Stras, Esq. at mstras@cozen.com or Elena Park, Esq. at epark@cozen.com

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