

SCOTT LEGAL SERVICES, P.C.

The Law Firm For Entrepreneurs, Business Owners & Investors

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H-1B Season & Cap are Fast Approaching - Are You Ready?

Top 10 Questions and Answers About H-1B Visas

The H-1B visa is a non-immigrant visa that permits a company to hire workers in specialty occupations. This visa category requires that the beneficiary (the foreign worker) have a Bachelor's degree, and the Petitioner (the U.S. company) can employ the worker for up to six years. This is a very popular visa because unlike many other non-immigrant visas that make applying for a green card very difficult and require foreign workers to maintain a residence in their home country, the H-1B visa permits for "dual intent." This dual intent allows one to apply for a green card while in the U.S. without running into problems.

The one catch of the H-1B visa is that there is a "cap" on the number of H-1B visas that are issued each year and this cap is often filled very quickly. For the fiscal year 2014, the limit is 65,000 for H-1B visas, with an additional 20,000 visas available for individuals who have earned a Master's degree or higher from a U.S. school. There is no way to predict when this year's H-1B cap will be used up, but in prior years the cap was exhausted within a matter of days. Most predict that this year the cap will be used up during the first week of April. (1 week after the first application can be filed). This is an important date as if you miss the cut-off, you will have to wait until the following year to get an H-1B Visa.

Scott Legal Services, P.C. advises that you file your H-1B petition on April 1st so that you will increase your chances of a successful petition. Here are the top 10 common questions asked by many of our clients. The answers are short answers to complicated questions and should only be used as a basis for a discussion with a qualified immigration attorney.

1. I have heard that as an employer I have to prove that I could not find any U.S. workers before I can get an H-1B Visa for a foreign worker. What do I have to do for this?

In order to hire a foreign worker under the H-1B program an employer must file a Labor Condition Application (LCA) with the Department of Labor (DOL). This form has a fair amount of information about the employer and the job that the employer is recruiting for and the employer must attest that the employment of the H-1B beneficiary will not adversely affect the working conditions of workers similarly employed in the area of intended employment. This attestation does not require advertising the job in a newspaper or providing documentation regarding your applicant search efforts. This process is not that difficult and is not at all like the PERM certification process that is required for a green card.

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Some employers that have had problems with the government in the past or who are “H-1B” dependent (many H-1B employees) have stricter requirements but many fall within the standard outlined above.

2. Are there any restrictions on what an employer can pay an H-1B worker?

Yes. There is a minimum amount an employer can pay an H-1B worker and this minimum amount is the higher of either the actual wage level paid to all other individuals with similar experience or the prevailing wage determined by the DOL for the occupation in the area of employment. In order to obtain the prevailing wage, employers should work with their lawyers to find out what the department of labor considers the appropriate wage for the employee. An employer is not permitted to pay less than that wage.

3. Can I work for myself or work Part-Time?

Generally you cannot work for yourself. While obtaining an H-1B visa while working for yourself is possible, it is very difficult and you would have to set up an entity where your board has the ability to fire you. This is a complicated area so you should consult an attorney if you want to go down this route.

You are permitted to work part-time under H-1B.

4. Can I work for more than 1 employer?

Yes under certain conditions. A visa in the U.S. only permits you to perform the job functions that your visa relates to. As such, an H-1B visa from one employer will not allow you to work for another employer or perform any independent contract or other work in the U.S.. You can however get another employer to sponsor you and as such have two H-1B petitions filed on your behalf.

5. What if I get terminated before my H-1B Visa expires?

If you lose your job you lose your status. While many speak of a 15 day grace period to leave the country, the relevant Statutes do not talk about any grace period so technically you will be out of status immediately after your last day of employment. (and the employer is required to notify the government that you no longer work there). You should note that an employer is required to pay reasonable costs to get you back to your home country if you are terminated before your visa expires.

6. If I already had an H-1B Visa and am Applying for a new one, am I subject to the cap?

If you already had an H-1B visa and you have not used up your 6 years, your new employer can apply for an H-1B visa for you in the same or similar industry without being subject to the cap.

7. How long does the process take?

Labor certification is done prior to filing the H-1B petition and this usually takes about 2 weeks to get an answer from the department of labor. If you file your H-1B petition on April 1, you can opt for premium

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processing and have an answer in 15 calendar days. Premium processing will run you an additional \$1225 but it is well worth it to keep your place in line.

8. Can I bring my family and can they work in the U.S.?

H-1B visa holders can bring their spouse and children under 21 years of age to the U.S. under the H4 Visa category as dependents. While the dependents are permitted to remain in the U.S., an H4 visa holder is not eligible to work in the US. They can however attend school, obtain a driver's license and open a bank account while in the US.

9. How much does it cost?

An H-1B visa has hefty filing fees and these fees can run over \$3,000 depending on the number of employees an employer has and whether premium processing is elected. In addition, legal fees will run you around \$3,000 or more depending on the complexity of a case.

10. Do I need a lawyer?

Yes. Like most Immigration law, the H-1B regulations and related Labor Certification Application (LCA) are complicated and you must demonstrate to immigration officials and the department of labor that you have met all of the legal elements. In addition, given the quota/cap, you have one “bite at the apple” as there is a good chance that if you make a mistake, the cap will be filled.

If you are considering an H-1B Visa, contact Scott Legal Services, P.C.. For more information on this and other immigration Visas click [here](#). You can also call us at 212-223-2964 or email us at iscott@legalservicesincorporated.com.

Also, click [here](#) for your free **White Paper** that summarizes the top 10 Immigration Questions and Answers.