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BUSINESS IMMIGRATION AND COMPLIANCE BRIEFING: NEW GUIDANCE ON \$100,000 H-1B FEE

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The Department of Homeland Security ("DHS"), through its U.S. Citizenship and Immigration Services ("USCIS"), issued new guidance related to the September Presidential Proclamation titled "**Restriction on Entry of Certain Nonimmigrant Workers.**" The Proclamation imposes a one-time \$100,000 fee on employers submitting new H-1B petitions on behalf of individuals currently outside the U.S. USCIS has now outlined situations when the new \$100,000 fee is required and provided payment portal information.

The Presidential Proclamation is facing two legal challenges in federal court. On October 3, 2025, a coalition of immigration advocacy organizations and impacted employers brought suit in the Northern District of California, seeking to enjoin enforcement of the new fee. The lawsuit challenges the President's authority to issue the Proclamation on several grounds, including that the Proclamation exceeds the authority granted to the President under the Immigration and Nationality Act (INA) and circumvents traditional notice-and-comment rulemaking procedures mandated by the Administrative Procedures Act (APA). Most recently, on October 16, 2025, the U.S. Chamber of Commerce filed suit in the District of Columbia, contending that the new fee contravenes provisions of the INA, which require that fees for the H-1B program be based on the costs incurred by the government in processing visas.

Despite the pending federal lawsuits and the remaining questions regarding implementation, payment, and fee applicability to H-1B quota exempt employers, below are some key takeaways and practical considerations for H-1B employers and stakeholders.

KEY TAKEAWAYS OF GUIDANCE

- The new fee does not apply to individuals who are beneficiaries of employer H-1B petitions that were approved or filed with USCIS prior to September 21, 2025.
- The new fee does not apply to individuals who are already in the U.S. and will be beneficiaries of new employer H-1B petitions for extension of stay, change of status, or amendment, as long as they are eligible for the requested action. If the petition is approved, then these individuals may subsequently travel outside of the U.S. without triggering the new fee.

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- Existing H-1B workers in possession of a valid travel visa issued by the U.S. Consulate may continue to travel to and from the U.S. without triggering the new fee.
- Existing H-1B workers remain eligible to apply for travel visas through the U.S. Consulate without triggering the new fee.
- The new fee must be paid by employers filing new H-1B petitions with USCIS on behalf of beneficiaries who are abroad and must apply for a new travel visa to enter the U.S. in H-1B status.
- The new fee must be paid by employers filing new H-1B petitions with USCIS on behalf of beneficiaries in the U.S. at the time of submission but who request consular processing or "Notify the Office" for port of entry/pre-flight petitions to activate H-1B status.
- Prior to filing the H-1B petition with USCIS, employer H-1B sponsors may submit the required \$100,000 payment on behalf of beneficiaries subject to the new fee through pay.gov by following instructions: <https://www.pay.gov/public/form/start/1772005176>.
 - o Evidence of the scheduled payment from pay.gov or evidence of fee payment exception from the Secretary of Homeland Security is required with the H-1B petition submission.
 - o USCIS will deny H-1B petitions that do not include the requisite proof of new fee payment or of payment exception.
- Fee payment exception requests may be emailed with supporting documents to a designated email address at DHS headquarters, and the exceptions may be granted by the Secretary of Homeland Security in "extraordinarily rare circumstance" where the Secretary determines that a particular individual's presence in the U.S. as an H-1B worker is:

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

- in the national interest;
- that no American worker is available to fill the role;
- that the individual worker does not pose a threat to the security or welfare of the U.S.; AND
- that requiring the petitioning employer to make the payment on the individuals behalf would significantly undermine the interests of the U.S.

Law Clerk (Admission Pending) William Butler contributed to this article.

This alert is for informational purposes only and is not intended to be construed or used as legal advice. Wiggin and Dana's Business Immigration and Compliance Practice Group will continue to provide briefings with material employment-based immigration case updates. If you have any questions, please contact the practice group leader, Najia Khalid, at 203.498.4314 or nkhalid@wiggin.com.