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DHS and DOL Announce Availability of Additional H-2B Visas for Fiscal Year 2023

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WASHINGTON— The Department of Homeland Security (DHS) and the Department of Labor (DOL) are issuing a [temporary final rule](#) that makes available 64,716 additional H-2B temporary nonagricultural worker visas for fiscal year (FY) 2023. These supplemental H-2B visas are for U.S. employers seeking to petition for additional workers at certain periods of the fiscal year before Sept. 15, 2023.

“The Department is making supplemental H-2B visas available earlier than ever, ensuring that American businesses can plan for their peak season labor needs,” said Secretary of Homeland Security Alejandro N. Mayorkas. “At a time of record job growth, these visas will also provide a safe and lawful pathway to the United States for noncitizens prepared to take jobs that are not filled by American workers.”

The supplemental H-2B visa allocation consists of roughly 44,700 visas available to returning workers who received an H-2B visa or were otherwise granted H-2B status during one of the last three fiscal years. The remaining 20,000 visas are reserved for nationals of El Salvador, Guatemala, Honduras, and Haiti, regardless of whether they are returning workers. The statutory semiannual cap authorized under the Immigration and Nationality Act (statutory cap) of 33,000 visas for the first half of FY 2023 was reached on Sept. 12, 2022.

The supplemental H-2B visas have been divided into the following allocations:

- For employers seeking nationals of El Salvador, Guatemala, Honduras, and Haiti: There are 20,000 visas reserved for the entirety of FY 2023. Employers requesting an employment start date in the first half of FY 2023 may file such petitions starting Dec. 15, 2022. Employers requesting an employment start date in the second half of FY 2023 must file such petitions no earlier than 15 days after the second half statutory cap is reached.
- For the first half of FY 2023: There are 18,216 immediately available visas limited to returning workers regardless of country of nationality. These petitions must request employment start dates on or before Mar. 31, 2023. Employers requesting an employment start date in the first half of FY 2023 may file such petitions starting Dec. 15, 2022.
- For the early second half of FY 2023 (Apr. 1 to May 14): There are 16,500 visas limited to returning workers regardless of country of nationality. These early second half of FY 2023 petitions must

request employment start dates from Apr. 1, 2023, to May 14, 2023. Furthermore, employers must file these petitions no earlier than 15 days after the second half statutory cap is reached.

- For the late second half of FY 2023 (May 15 to Sept. 30): There are 10,000 visas limited to returning workers regardless of country of nationality. These late second half of FY 2023 petitions must request employment start dates from May 15, 2023, to Sept. 30, 2023. Furthermore, employers must file these petitions no earlier than 45 days after the second half statutory cap is reached.

This is the first time the Departments have issued a single rule making available H-2B supplemental visas for several allocations throughout the entire fiscal year, including an allocation for the late second half. The H-2B program permits employers to temporarily hire noncitizens to perform nonagricultural labor or services in the United States. The employment must be for a limited period of time; the petitioner must have a temporary need for services or labor to be performed, i.e., a one-time occurrence, peak load need, seasonal need, or intermittent need. The Departments are soliciting comments from the public on their implementation of the H-2B supplemental authority in this rule.

Employers seeking to hire H-2B workers under the FY 2023 supplemental cap must attest that they are suffering or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested on the petition. Employers seeking to hire H-2B workers must take a series of steps to test the U.S. labor market. They must provide certification from DOL that proves there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work for which they seek a prospective foreign worker, and that employing the H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Employers filing an H-2B petition 30 or more days after the certified start date on the temporary labor certification must also take certain additional steps to recruit U.S. workers.

It is also critically important to protect H-2B workers from exploitation and abuse, and to ensure, consistent with law, that employers do not refuse to hire or appropriately recruit U.S. workers to perform the temporary work. The temporary final rule features several provisions to protect both U.S. and H-2B workers. For example, DHS will subject employers that have committed certain labor law violations in the H-2B program to additional scrutiny in the supplemental cap petition process. This additional scrutiny is aimed at ensuring compliance with H-2B program requirements and obligations. In addition, the Departments are participating in the White House-convened H-2B Worker Protection Taskforce, announced in October, to address these issues more broadly.

Petitions requesting supplemental allocations under this rule must be filed at the California Service Center. Petitions filed under the supplemental allocations in this rule at any location other than the California Service Center will be rejected and the filing fees will be returned. In addition, for petitions requesting returning workers, or workers from Haiti, El Salvador, Guatemala, or Honduras, with a start date in the first half of the fiscal year, USCIS will not accept any requests for premium processing until Jan. 3, 2023. USCIS will reject the I-907 and return the premium processing filing fee if the I-907 was received before Jan. 3, 2023.

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