



**REMINDER:**

**H-1B FILING PERIOD FOR FISCAL YEAR 2011 COMMENCES APRIL 1, 2010**

April 1, 2010, is the first day the United States Citizenship and Immigration Services (“USCIS”) will begin accepting H-1B petitions filed on behalf of nonimmigrant workers for the 2011 fiscal year (“FY 2011”) starting October 1, 2010. The H-1B visa classification is for temporary employment of foreign professionals in specialty occupations, including but not limited to, information technology professionals, business analysts, financial managers, engineers, architects, and allied health professionals such as physical therapists, as well as fashion models. There is a yearly statutory cap of 65,000 H-1B approved petitions for the general category, of which 6,800 are reserved for Chile and Singapore Free Trade H-1B visas, resulting in only 58,200 for all other nationalities. There is an additional quota of 20,000 for foreign professionals with advanced degrees (Master’s degrees or higher) from U.S. institutions.

Over the last several years, with the exception of 2009, H-1B filings have greatly exceeded the statutory quota, causing USCIS to invoke a lottery system at the start of the filing period. In 2009, perhaps due to the downturn in the economy, H-1B filings did not meet the statutory quota until December 21, 2009. However, it is unknown at this time how the number of H-1B filings for FY 2011 will be affected as compared to the number of H-1B petitions received by USCIS in the past.

Employers who anticipate the need for new H-1B workers to commence work on October 1, 2010, should consult with immigration counsel as soon as possible so that H-1B petitions are ready to be filed on April 1, 2010, in order to take advantage of the H-1B numbers while they are available, and to carefully analyze those circumstances in which cap exemptions might be claimed. Cap exemptions may apply in some instances. For example, requests for extensions of stay for current H-1B workers, amendments to H-1B petitions requesting a change in the terms of employment for current H-1B workers and change of employer petitions for individuals already in H-1B status do not count toward the cap. In addition, petitions for new H-1B employment are not subject to the annual cap if the foreign professional will be employed at an institution of higher education or a qualifying related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization.

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