Policy Backgrounder

H-1B Restrictions and Employer Enforcement

Recent Developments

The Administration is reshaping the H-1B visa program through higher proposed costs, wage-based selection, closer scrutiny of employer layoffs, and expanded investigations into alleged fraud and worker exploitation. Together, these actions raise the stakes for employers that rely on global talent while intensifying the policy debate over how to protect US workers without weakening the country's ability to attract specialized skills.

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- The Administration extended the required $100,000 fee for H-1B visas, but actual payment of the fee is on hold pending the outcome of litigation. Together with a proposed $103,265 H-1B petition fee, wage-based selection system, and pending prevailing-wage changes, policy changes raise the costs and potential risks for companies sponsoring H-1B visas.
- A new Executive Order also directs agencies to consider sponsors' recent and planned layoffs of similarly situated US workers, linking H-1B review more closely to employers' broader workforce decisions and adding risks for employers. Federal investigations are also expanding scrutiny of H-1B and permanent residency application practices, including wages, recruitment, worker placement, "benching," and third-party staffing relationships.
- The effects will vary by employer and sector. Based on the current distribution of H-1B visas, impact would be felt particularly in technology and engineering roles and on smaller entities for whom any fees could deter using these workers. Impacts will also vary depending on access to domestic workers, ability to locate work outside the US, reliance on specialized foreign talent, and how agencies will ultimately interpret the link between H-1B visas and a company's broader employment practices.

From a Talent Program to a Broader Employer Review

The H-1B program allows US employers to hire foreign workers temporarily in "specialty occupations" that generally require at least a bachelor's degree in a related field. Congress established an annual cap of 65,000 new visas, plus 20,000 slots for workers with qualifying advanced degrees from US institutions; universities and certain research organizations are generally exempt. Supporters argue that H-1B workers address specialized skill shortages and strengthen innovation, while critics contend that some employers use the program to suppress wages, displace US employees, or eventually transfer jobs abroad.

The Administration has recently acted to reinforce its policies on the use of H-1B visas. On September 18 it extended to September 21, 2027, a restriction first imposed in 2025: certain H-1B workers outside the US may not enter to begin employment unless the sponsoring employer makes a $100,000 payment.[1] The Secretary of Homeland Security may grant national-interest exceptions covering an individual worker, a company, or an industry.

The same day, the President issued an Executive Order that may have broader implications for employers' workforce decisions. The Departments of State, Labor (DOL), and Homeland Security (DHS) must now consider whether a sponsoring employer directly or indirectly conducted layoffs during the preceding year—or plans future layoffs—that negatively affect similarly situated US workers.[2] The order also requires those agencies to consult with the Departments of Commerce and Education and the Small Business Administration on wage, employment, academic, industry, and other economic information relevant to the H-1B program. Agencies may therefore assess an H-1B visa request not only by the job and required wage but also in the context of a sponsoring company's layoffs, contractors, compensation practices, and broader workforce strategy.

H-1B Fees: What Is Blocked and What Is Proposed?

On July 24, the US Court of Appeals for the First Circuit declined to stay a ruling that that the $100,000 fee is an unauthorized tax and exceeds the President's authority.[3] In response, US Citizenship and Immigration Services confirmed that it would not collect the payment now.[4] That result conflicts with an earlier district court ruling which upheld the policy under the President's authority to restrict entry. The US Chamber of Commerce and the Association of American Universities appealed that decision to the DC Circuit. The September decision extends the policy's duration but does not restore collection. Therefore, employers are currently not required to make the payment, although another court decision could change that result.

The $100,000 fee is distinct from a $103,265 H-1B fee DHS proposed in August.[5] The proclamation for the fee invokes the President's authority to restrict entry and focuses principally on workers outside the US who need admission to begin employment. The DHS proposal instead relies on DHS's authority to recover immigration-system costs and would apply to most new petitions subject to the annual H-1B cap, including workers seeking to change from student to H-1B status without leaving the country.[6] DHS projects that its proposed fee would raise approximately $8.8 billion annually for immigration adjudication, vetting, courts, enforcement, and other functions. The proposal anticipates fewer petitions and significant economic effects on more than 11,000 small entities. Because these policies rest on different authorities, cover different groups, and remain at different stages, it is premature to assume employers will ultimately pay both charges.

Program Redesign and Enforcement

Higher costs are one element of the Administration's broader strategy on visa reform. DHS replaced the randomized H-1B cap lottery with a system favoring higher-wage positions, while DOL proposed increasing prevailing-wage requirements for H-1B and permanent-residency sponsorship. In response, applications from the largest IT staffing and outsourcing firms fell from 24,946 to 2,055 between FY2026 and FY2027, while the share of visaholders with at least a US master's degree rose from 45.1% to 66.1%.

Enforcement is also expanding. In July, DOL's Office of Inspector General (OIG) opened an investigation into alleged fraud and human trafficking involving H-1B and PERM, the labor-certification process generally required for employment-based permanent residency. The investigation covers alleged falsified applications, below-wage employment, wage kickbacks, fraudulent recruitment, and unpaid or underpaid "benching."[7]

Business Implications

The Administration's approach makes visa sponsorship a broader enterprise issue. Information supplied by HR, compensation teams, recruiters, business units, and staffing firms may now trigger immigration, wage, civil-rights, or criminal scrutiny if filings are inconsistent with actual duties, wages, worksites, recruitment, or workforce decisions.

Employers should assess whether recent or planned layoffs involve positions comparable to those filled by H-1B workers. Because the new policy does not define "similarly situated," companies should coordinate closely with leaders planning restructurings or reductions in force. Companies should also review staffing firms and labor brokers for recruitment, wage, placement, and "benching" practices. Even businesses that are not formally petitioning for a visa could face exposure through their relationships with intermediaries.

The economic effects vary by employer and industry sector. In the current distribution of H-1B visas, the impacts fall most heavily on technology, engineering, and computer-related roles and positions at universities and in health care. Higher costs and enforcement may discourage low-wage outsourcing and worker exploitation, but they could also constrain specialized hiring—particularly for smaller employers, health systems, universities, and research organizations with limited alternatives. Some companies may also be able to avoid the need for H-1B sponsorship if they can locate work outside the US, though this might also affect their ability to attract recent graduates who are foreign nationals. The outcome of the Administration's policy changes and their effects on business will depend on pending litigation, as well as how broadly agencies ultimately connect visa sponsorship to employers' wider workforce decisions.

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Endnotes

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[1] https://www.whitehouse.gov/presidential-actions/2026/09/restriction-on-entry-of-certain-nonimmigrant-workers-faad/

[2] https://www.whitehouse.gov/presidential-actions/2026/09/enhancing-program-integrity-and-integrity-and-interagency-coordination-in-the-administration-of-the-h-1b-nonimmigrant-visa-program/

[3] https://www.ca1.uscourts.gov/sites/ca1/files/opnfiles/26-1699O-01A.pdf

[4] https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations

[5] https://www.conference-board.org/research/ceo-center-newsletters-alerts/administration-proposes-new-fees-on-h1-b-petitions

[6] https://www.federalregister.gov/documents/2026/08/25/2026-17324/fee-for-certain-h-1b-petitions

[7] https://oig.dol.gov/public/Press%20Releases/OIG-Press-Release-070826.html