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NEWSLETTER

By Ray Ramos

News about the H-2B program

- Additional H-2B visas were authorized. The annual statutory cap remains 66,000 visas (33,000 for each half of the fiscal year), but the U.S. government authorized up to 64,716 supplemental H-2B visas to help employers facing labor shortages.
- Supplemental visas are allocated in phases. The extra visas are released for different employment start dates during the fiscal year. Some allocations are reserved for returning workers (those who previously held H-2B status), while others are set aside for nationals of certain designated countries.
- Employers must demonstrate "irreparable harm." To use the supplemental visas, employers must attest that they would suffer irreparable harm without the additional workers and must keep supporting documentation available for government review.
- The cap fills quickly. USCIS announced that it received enough petitions to reach the regular H-2B cap for the second half of FY 2026. Employers who missed the regular cap may still qualify under one of the supplemental visa allocations if eligible.
- The Department of Labor continues to update filing procedures. The Office of Foreign Labor Certification has issued guidance and webinars covering filing windows, random selection procedures, and best practices for employers submitting H-2B applications.

Additional H-2B visas were authorized.

More visas are available—but they are not automatic. The regular H-2B cap remains 66,000 visas per fiscal year. For FY 2026, DHS authorized up to 64,716 supplemental visas for employers that qualify.

You must prove "irreparable harm"
If you apply under the supplemental visa allocation, you must certify that your business would suffer irreparable harm if you cannot employ all the requested H-2B workers.

Timing is more important than ever

- 120–150 days before the workers are needed.
- Prevailing wage request.
- Temporary Labor Certification through the Department of Labor.
- Recruitment of U.S. workers.
- Filing the USCIS petition immediately when eligible.
- Begin planning 4–6 months before your workers are needed.
- Prepare financial records and operational evidence in case you need to show irreparable harm.

What challenges do employers face when dealing with the H-2B program

The additional visas intended to cover the demand for this year is riddled with challenges employers must face to get the workers. Among the hurdles there are, the employer must show an irreparable harm attestation of financial nature that their business will go if they do not get the workers. This attestation must be submitted in writing on a timeline set by the DHL and Immigration Dept. Maintain supporting documentation for a period of 3 years. Be prepared by DOL and DHS reviewing visas. Broader enhanced vetting measures extending processing time and a closer scrutiny on the applications including the social Media history on some immigration forms. Also certain country-specific allocations may apply. What should an employer do? Begin the H-2B process ASAP, Work closely with an experienced H-2B agent, Keep detailed records of your temporary labor needs and be aware of filing windows closing quickly

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