



employer update: h1b and e-verify

MSK Client Alert

April 2009

It does not come as a surprise to employers that the annual H-1B visa lottery did not occur this April, for H-1B petitions effective October 1, 2009, the government fiscal year 2010. The sagging economy put a damper on the usual heavy number of petitions filed by employers seeking to offer temporary employment to qualified foreign professionals. Employers who filed their applications by the first available date have largely all received a fee receipt. However, since to date only 43,000 applications have been received there will not be a lottery as there were not more than the 65,000 applications filed; however there will be a lottery consisting only of petitions filed on the day when the USCIS determines the 65,000 limit has been reached, if that day ever comes.

This provides an opportunity for employers to file applications at this time. An applicant who is to be employed in the USA utilizing his professional education and background may qualify for an H-1B if the US employer has a job opening and requires the specialized knowledge of the foreign professional. Employers who are receiving federal government assistance must provide attestations that in seeking the H-1B visa, they have not unlawfully displaced U.S. workers.

On a different note, Employers should be aware that the new revised Form I-9 should now be utilized for all new hires and for all employees who may be subject to the federal contract provision.

Mandatory E-Verify provisions in federal contracts have once again been postponed with a start date of June 30, 2009. The rule applies to most federal contractors with contracts over \$100,000 and subcontracts of over \$3,000. Certain contracts, such as those for commercially available off-the-shelf items, are excluded.

Various states have already enacted provisions making this requirement mandatory for certain employers operating in those states: Arizona, Colorado, Georgia, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, and Utah. Also, a law prohibiting employers in Illinois from using E-Verify was struck down in the federal courts. The law making E-verify Mandatory for all employers in Arizona was recently upheld in federal court.

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