

An H-1B Season of Transition Begins

Labor & Employment Law Update

By Jacqueline Lentini McCullough on February 10, 2020

On February 3, 2020 a coding flaw in a mobile app delayed the tabulation and reporting of the Iowa Democratic Caucus results.

This high-profile failure reminds us that technological glitches can show up any time but especially when a system is put to extreme use.

This reminder is the guiding principle for an H-1B preparation strategy this year. A sound strategy involves planning for glitches with back up measures to ensure as smooth an H-1B filing experience as possible.

New changes to the H-1B filing process may introduce several speed bumps to the process of filing petitions.

Electronic Registration Process

This year the United States Citizenship and Immigration Service (USCIS) is implementing several changes to the H-1B petition process.

USCIS's new requirements include that employers register electronically in advance of filing an H-1B petition and pay a \$10 registration fee. USCIS officially announced this new process in the Federal Register on January 9, 2020.

Registration will happen via the organization's myUSCIS online portal. USCIS launched the myUSCIS portal in 2015. The portal currently permits filing of forms such as I-90, N-400, and N-600, but as of this writing has not yet enabled H-1B registrations. The \$10 registration fee will be paid on a separate platform, pay.gov.

Since October, the Department of Labor has been using its new Foreign Labor Application Gateway (FLAG) system to accept Labor Condition Applications (LCAs), which need to be in place before filing H-1B petitions.

Three different systems will play a role in the H-1B cap season this year – FLAG, pay.gov, myUSCIS – two of which are relatively new to the process.

Will the systems need to talk to each other? It is not yet known if myUSCIS will be able to see from pay.gov that the registration fee has been paid. As someone who has occasionally been challenged to get my computer to talk to my printer,

this question looms in my mind.

H-1B Filing Timeline

Also new this year is USCIS's schedule for the H-1B filing process.

While lawyers can establish myUSCIS accounts now, USCIS will only accept initial registrations from March 1 – March 20, 2020. Given the newness of the system and the unknown number of registrations that will be submitted, it is prudent to submit registrations during the early part of this time frame.

Between March 20th – 31st, 2020 USCIS promises to conduct the lottery and to inform registrants who have been selected by March 31. Selected registrants then have 90 days beginning April 1 to submit petitions.

USCIS included a clause in the Federal Register that would allow it to suspend the registration requirement if the system were found for any reason to be "inoperable." If that were to happen, USCIS would likely return to the prior system and accept paper petitions to count toward the cap on a first come first serve basis. That means the cap could be reached in just a few days as in past years.

Paper records ensured the Iowa Democratic Caucus would still be able to tally votes even if it took a long time. And paper could save the day for H-1Bs this year.

An H-1B Season of Transition Begins