

H-1B Modernization Rule Finalized

Labor & Employment Law Update

on January 9, 2025

The Department of Homeland Security has announced a comprehensive update to the H-1B visa program, set to take effect on January 17, 2025. This modernization introduces new flexibilities, strengthens oversight, and provides stability for employers and employees alike. A new Form I-129 will be required for all filings as of the effective date, with older versions no longer accepted.

Key Updates to H-1B Visa Program

1. **Deference Policy:** U.S. Citizenship and Immigration Services (USCIS) will generally defer to prior approvals for H-1B extensions unless there is a material error, significant change, or new evidence impacting eligibility. This codified approach minimizes the risk of denials caused by shifting policies.
2. **Specialty Occupation Clarifications:** Positions must require a degree directly related to job duties. This change could benefit some occupations while posing challenges for emerging fields like artificial intelligence.
3. **Cap-Gap Extensions:** F-1 students in OPT/STEM OPT programs now have extended work authorization through April 1, reducing employment gaps.
4. **Cap-Exempt Employers:** Organizations conducting research as a fundamental activity gain expanded eligibility for H-1B cap exemptions.
5. **Bona Fide Job Requirements:** Employers must demonstrate a legitimate specialty occupation role and ensure proper support through Labor Condition Applications.
6. **Enhanced USCIS Oversight:** Expanded worksite inspection authority aims to bolster program integrity. While intended to combat fraud, it raises concerns about potential misuse under future administrations.

Broader Context

The Trump administration's upcoming term features prominent voices like Elon Musk and Vivek Ramaswamy, who have expressed strong support for skilled foreign workers and the H-1B program. Musk advocates for global recruitment to maintain U.S. competitiveness, while Ramaswamy has highlighted the importance of excellence and hard work. It remains to be seen how these perspectives will influence immigration policy in practice.

What's Next?

The rule's implementation coincides with the start of a new administration, adding potential uncertainty. Rescinding or amending the rule would require a formal notice-and-comment process, likely taking at least a year.

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