

# H-1B Filers Rethinking Their Petitions After Pandemic

Employers seeking H-1B talent face array of unfamiliar obstacles

By Roy Maurer

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**2** 020 was already positioned to be a novel year for H-1B visa processing with the introduction of an electronic registration system ([www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/2020-h1b-visa-filing-process-has-changed.aspx](http://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/2020-h1b-visa-filing-process-has-changed.aspx)) for the annual lottery, which some worried would be overwhelmed due to the relative ease of submitting registrations. Then COVID-19 struck, shutting down the economy, creating a surge in unemployment, disrupting business plans and delaying immigration processing.

The dramatic changes to the U.S. economy between March 1—when employers entered the H-1B lottery—and one month later, when they were notified that their applicants were selected for visas, have left many uncertain of their next move.

"There's no doubt in my mind that many employers will not move forward with filing H-1B cases even if they have cases selected, because they don't know if those jobs will even exist," said Andrew Wilson, a partner at Lippes Mathias Wexler Friedman and co-leader of the firm's immigration practice in Buffalo, N.Y.

Anantha Paruthipattu, founder and principal attorney at Paruthipattu Law Firm, based in Herndon, Va., agreed that business disruptions and downsizing will influence H-1B hiring. "I've seen about 10 percent of my clients being affected by some sort of furlough or layoffs," he said. "I suspect some of them will decide they cannot go through with their selections. Much will depend on how soon the economy opens back up."

When the H-1B filing season opened this year, the unemployment rate was around 3.5 percent, and U.S. Citizenship and Immigration Services (USCIS) reported a record number of registrations for H-1B visas. By the time employers were notified of the lottery's results on April 1, the U.S. economy was devastated—more than 26 million people filed for unemployment benefits between March 15 and April 18 as businesses were shuttered to stop the spread of the coronavirus.

"From what I'm hearing, employers are still in a coping stage," Paruthipattu said. "Normally, we would be under pressure to file these cases immediately, but I think employers are taking it slowly, dealing with the same uncertainty we are all dealing with. It's been three weeks since filing has been open for petitions, and I haven't filed one petition yet."

Paruthipattu has been waiting for his employer clients to gather the necessary documentation from selected H-1B beneficiaries. "They are moving more slowly than usual because they have until June 30 to file, and also I think they are taking a wait-and-see approach to see if they can justify going through with the filing," he said.

Wilson said that a larger concern for employers has been how to manage their H-1B workforce during the pandemic. "Every single client is asking me about using paid time off, furloughs and layoffs in regard to H-1B employees," he said. "There are specific rules related to H-1Bs on these matters ([www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/managing-h1b-workers-during-covid19.aspx](http://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/managing-h1b-workers-during-covid19.aspx))."

Wilson said he's been buoyed by the realization that most companies he's dealt with have been working hard to maintain as many of their workers as possible. "They may be looking to cut costs but really trying not to lay off large groups of workers right now ([www.shrm.org/ResourcesAndTools/hr-topics/talent-acquisition/Pages/Companies-Cut-Costs-with-Hiring-Freezes.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/talent-acquisition/Pages/Companies-Cut-Costs-with-Hiring-Freezes.aspx))," he said. "And HR

has been working around the clock, hammered with an array of issues all at once due to COVID."

Both attorneys agreed that if enough employers don't follow up with full petitions, visas could be freed up for workers who weren't selected the first time around.

"It's my understanding that USCIS would take any unused numbers and apply them again to run another lottery in July," Paruthipattu said.

"It's an added benefit to having the electronic registrations data available."

Wilson noted that while running a second lottery for unused visa numbers is a positive for those not selected the first time around, the chances of being chosen are still very low due to the record number of filings this year. Employers requested 275,000 workers for just 85,000 slots, 20,000 of which are reserved for people with advanced degrees from U.S. universities.

*[SHRM members-only toolkit: Understanding and Obtaining U.S. Employment Visas (www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/obtainingusemploymentvisas.aspx)]*

### Paper-Based Filing Questioned

The new USCIS online registration system has received mostly glowing reviews from users.

"The experience overall was good," Paruthipattu said. "Once I started registering, it was a smooth process, and I didn't have any issues with the submissions."

"It worked surprisingly well," Wilson agreed. "It's far superior to the previous H-1B lottery process."

But the next step in that process, filing full H-1B petitions for selected candidates, is still paper-bound. Petitions due by June 30 must be submitted through the mail. USCIS has relaxed some requirements in response to the pandemic, including allowing scanned or photocopied signatures in lieu of original signatures, but the agency has also announced that employers can expect a "general delay" in the processing of petitions.

"Processing is still ongoing, if slower," Wilson said. "Field offices and in-person services are closed, but the service centers [that process H-1B petitions] are operational."

Whether or not companies will have approvals in time for H-1B workers to begin working by the normal start date, Oct. 1, is unknown, Paruthipattu said. "The later it is to get started, the harder it may be to start work on time."

He said the wait right now is primarily from the employer side. "I have not received supporting documentation yet from employers, and I anticipate they will have difficulty gathering the required information from workers," he said. "I expect delays with information flow based on the circumstances. But it's still early. I think that companies will start to feel the pressure in May and June as the deadline approaches."

Another perplexing issue has to do with notices required by the Department of Labor. "Normally before you file, you must have labor condition application notices posted at the worksite for at least 10 workdays," Wilson said. "Posting notices in worksites that have been shut down due to COVID does not comply with the law. The whole point of the notice is to make them visible to U.S. workers."

He said that employers have two options: either to post the notices electronically so affected employees can view them, or to mail hard copies to every employee.

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