

## President Bush signs H-1B and L-1 changes – 8 December 2004

### President Bush signs New L-1 and H-1B Regulations

On November 20, 2004, Congress passed the Fiscal 2005 Omnibus Appropriations Bill (H.R. 4818). Within this expansive piece of legislation is new L and H-1B legislation that will affect US businesses that hire foreign-born professionals. The President signed the bill into law on 8 December 2004.

**Many of the changes proposed in this new legislation will go into effect as soon as the President signs this bill into law and some will go into effect 90 or 180 days later.**

Here is a brief summary of the major points contained in the legislation:

#### L-1 Visas

INA § 214(c)(2) is modified to prevent an L-1B visa holder from being **primarily** stationed at the worksite of another employer in cases where:

The L-1B visa holder will be controlled and supervised by an unaffiliated employer, or

The placement of the L-1B visa holder at the third party site is part of an arrangement to provide labor for the third party rather than placement at the third party site in connection with the provision of a product or service involving specialized knowledge specific to the petitioning employer.

This applies to initial, extended or amended petitions filed on or after the effective date.

Additionally, the provision permitting the six-month work requirement for L-1 blanket petitions is no longer valid. This modification applies only to initial petitions filed on or after the effective date of the subtitle.

The Department of Homeland Security will collect and publish statistics on

- Number of non-immigrants who are classified in the L-1B category; and
- Number of L-1B non-immigrants who will work primarily offsite.

These changes to the L-1 visa take effect 180 days after the date of enactment of the legislation.

#### H-1B Visas

Employers who are H-1B dependant according to INA § 212(n)(1)(E)(ii) or have committed a willful failure or misrepresentation during the preceding 5 years must make a non-displacement attestation on the LCA.

The ACWIA fees have been re-instated and made permanent. The fee for each petition is raised from \$1,000 to \$1,500. Employers with 25 or fewer



1-800-437-7313

full-time employees in the U.S. will only be responsible for ½ of the fee (\$750). The standard H-1B exemptions apply (institutions of higher learning, non-profits, 2nd extension with the same employer, amended petition without requests for extension of stay, etc.).

Employers are required to pay 100% of the prevailing wage. The DOL surveys must now provide 4 levels of wages commensurate with experience, education, and level of supervision, but where 2 level wage surveys are used a formula will be provided for calculating 2 additional intermediate levels.

20,000 new H-1B visas are available per fiscal year for aliens who have earned a Master's or higher degree from a **U.S. institution of higher education.**

This law institutes a new \$500 fraud fee. This fee will apply to employers filing either an initial petition for an H-1B or L visa or for a change of status petition. A \$500 fraud fee will also be charged for an alien filing an L blanket petition abroad. These changes take effect on the date of enactment and the fees imposed apply to petitions and visa applications filed 90 days after the date of enactment.