



Samantha Wolfe

Partner
303.295.8479
Denver
sdwolfe@hollandhart.com

H-1B Program Overhaul: New \$100K Fee and Enhanced Enforcement Begin Now

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On September 19, 2025, the Administration issued an Executive Order imposing new, significant conditions on H-1B visa holders seeking to enter the United States (H-1B EO). USCIS and CBP also released policy memoranda on September 20, followed by a Department of State H-1B FAQ on September 21. These changes reflect this Administration's stated goal to prevent misuses of the H-1B visa program and appear designed to discourage companies from hiring foreign workers.

Key Takeaways for Employers:

- Only new H-1B visa applications require an up-front payment of \$100,000
- H-1B visas filed or approved before September 21, and future H-1B renewals, should not be affected by the new payment
- The Department of Labor launched a new initiative to investigate wage and hour violations by employers of H-1B visa holders
- More guidance and new rules are expected in the coming months

What is Changing?

Under the H-1B EO, and based on the USCIS, CBP, and DOS clarifications, effective at 12:01 a.m. EDT on September 21, 2025, and continuing through September 21, 2026 (unless extended), any new H-1B petition filed on or after the effective time must be accompanied by a \$100,000 payment. This requirement applies to all new filings, including the FY 2026 H-1B lottery, but does not affect petitions filed or approved before September 21, 2025, previously issued H-1B visas, or standard H-1B renewals in the US. The fee is a one-time payment tied to the submission of a new petition. The federal government will make a recommendation in spring 2026 to extend or renew the \$100,000 payment requirement beyond one year.

USCIS and DOS have been directed to implement the new payment requirement for employers filing new H-1B petitions for workers abroad and companies should prepare by including the \$100,000 fee in talent management budgets or pursuing other visa sponsorship options.

Importantly, the H-1B EO does not prevent current H-1B visa holders with valid visas from traveling internationally for business purposes. However, employers should consider restricting nonessential international travel for H-1B workers and evaluate alternative options where possible **because**

any complications at the border could result in delays or denials of entry that affect business operations.

Department of Labor Wage Enforcement Initiative: Project Firewall

On September 22, 2025, the U.S. Department of Labor announced Project Firewall, a new initiative aimed at investigating employers that use the H-1B program. Potential consequences for violations include repayment of back wages to workers, civil monetary penalties, and possible debarment from sponsoring H-1B employees in the future.

To prepare for an expected uptick in investigations and enforcement—like we've seen this year on I-9 compliance—employers should audit their current H-1B workforce by reviewing wages, worksites, and job duties. Those responsible for managing H-1Bs must be trained on compliance obligations and risks, and companies should establish a clear plan for responding to government inquiries, including designating counsel. Finally, internal communications should emphasize the company's commitment to compliance and non-discrimination.

Future Rules and Guidance Expected

The H-1B EO provides that entry on a B visa, with the intent to change status to H-1B once in-country, will not serve as a valid workaround for visa holders whose employment is scheduled to begin before October 1, 2026, and will be extremely difficult to pursue under this framework. As employers scramble to salvage planned investments and attempt creative workarounds, we expect more guidance on what is not allowed in the coming months.

The H-1B EO mentions that certain exceptions may be available for individuals or industries where hiring is deemed to be in the national interest and not a threat to U.S. security or welfare, though details remain unclear. This could potentially carve out fields that overlap with national interest waiver standards, but employers should not rely on this until further agency guidance is issued.

The H-1B EO Order directs agencies to initiate new rulemaking expected to significantly raise prevailing wage requirements and prioritize admission of high-skilled, high-paid individuals. Proposed changes must follow the federal rulemaking process, including prescribed periods for notice and comment, and then any agency revisions before they are adopted. It is difficult to predict when new rules might be effective.

We anticipate additional changes will be implemented, and our team continues to track updates and vigilantly monitor guidance from DHS and DOS on how payments will be made, how proof of payment will be documented at ports of entry, and whether any exemptions will apply. We anticipate that heavy H-1B employer users will launch court challenges to the H-1B EO and we'll continue to provide real-time updates.

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