

The New H-1B Wage-Weighted Lottery: What Employers and Foreign Nationals Need to Know for This Year's Cap Season

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The Department of Homeland Security has finalized a significant change to the H-1B cap selection process: a move from a random lottery to a wage-weighted selection system. This is a seismic shift from how H-1B workers have been selected in cap lotteries and is one piece in a broader array of changes affecting employment-based immigration, as discussed in our previous blog.

While the total number of available H-1B visas remains the same, how registrations are selected to obtain a cap-subject H-1B visa has changed, making early planning and strategic preparation more important than ever. The new rule that created the wage-weighted system is set to take effect February 27, 2026 and will be in place for this year's H-1B cap season, absent any successful legal challenges or unforeseen changes to the timing.

What Is the Wage-Weighted H-1B Lottery?

Under the new final rule, USCIS will continue to conduct a lottery when the number of H-1B registrations exceeds the annual caps. However, registrations will no longer have equal odds of selection.

Instead, USCIS will apply a wage-weighted system, under which registrations offering higher wages—based on the Department of Labor's prevailing wage levels—receive increased selection weight.

In practical terms, the new system's main implications include the following:

- Selection chances are weighted by wage level. Positions with a Wage Level 1 will be entered into the selection pool once; Wage Level 2 positions will be entered twice;



Wage Level 3 positions will be entered three times; and Wage Level 4 positions will be entered four times.

- Wage level is determined by the job duties, minimum requirements, and worksite location(s) tied to the occupational classification for the H-1B position.
- Registrations associated with higher prevailing wage levels receive greater selection weight. Registrations offering lower wage levels remain eligible but have lower odds of selection.

The Department of Homeland Security's stated purpose in instituting this system is to prioritize higher-paid, higher-skilled positions and better align the H-1B program with U.S. labor market needs.

However, many have raised concerns about the following impacts:

- Reducing access for early-career professionals.
- Disadvantaging startups and certain nonprofits.
- Creating instability for F-1 OPT and STEM OPT workers relying on transition to H-1B status.

What Has Not Changed

Despite this structural shift, certain elements of the H-1B visa lottery remain the same:

- The statutory H-1B cap remains unchanged (65,000 regular cap visas plus 20,000 for individuals with U.S. master's degrees or higher).
- USCIS will still announce a single annual registration period when demand exceeds supply.
- The lottery does not impact H-1B cap exemptions for institutions of higher education, nonprofit research organizations, and government research organizations. These types of organizations continue to be exempt from the cap lottery process.
- All standard H-1B eligibility requirements continue to apply.

The difference lies not in eligibility, but in lottery selection probability.



What This Means for Employers

For employers, the wage-weighted system introduces new strategic and compliance considerations at the registration stage, not just at petition filing. More planning may be required prior to registration than in previous years.

Key implications include:

- Compensation planning now directly affects selection odds.
- Job descriptions, minimum requirements, and worksite locations must be carefully structured and internally consistent.
- Entry-level, junior, or lower-paid roles may face comparatively reduced selection chances.
- Remote or multi-location roles may impact prevailing wage level determinations.

Because USCIS requires more detailed job information during registration, inaccuracies or inconsistencies between registration and the petition filing can create risk, including higher chances of Requests for Evidence (RFEs) or a denial.

What This Means for Foreign Nationals

For foreign nationals seeking H-1B sponsorship:

- Selection odds are now influenced by the wage level associated with the offered position.
- Candidates in higher-paid or more specialized roles within a given occupational classification may see improved chances relative to lower-wage positions.
- Being “eligible” is no longer the only consideration in registering for the lottery—how the role is classified and compensated matters for purposes of registration and the lottery.

This change underscores the importance of understanding how a role is defined, how wages are set, and how work arrangements are structured well before registration.



Why Early Planning Is Critical This Year

Under the new system, early planning is no longer optional—it is essential.

We strongly recommend that employers and foreign nationals adjust their practices in several ways:

- Begin H-1B cap planning as early as possible before registration opens.
- Initiate sponsorship discussions early to allow time for role review, wage analysis, and internal approvals.
- Avoid last-minute decisions that may limit strategic options or introduce compliance risk.

Because wage level, job structure, and worksite details now influence selection odds, these issues must be addressed before registration—not after a lottery result.

Given the complexity of the wage-weighted lottery and the factors requiring assessment, individualized consultations are more important than ever.

Early consultations will allow time to:

- Evaluate job duties and minimum requirements in relation to prevailing wage levels.
- Identify potential risks related to wage compression, remote work, or evolving roles.
- Assess how the new selection framework may impact specific candidates.
- Recommend alternative strategies and visa options where appropriate.

The wage-weighted lottery represents a fundamental shift in how H-1B visas are allocated. While it does not reduce the uncertainty that is inherent to the lottery, it does reward careful preparation, thoughtful role structuring, and early action.



Conclusion

The new H-1B wage-weighted lottery system does not change who can register—but how likely a registration is to be selected. In this environment, early planning, early sponsorship initiation, and individualized legal guidance are key to navigating the cap process effectively.

Our firm works closely with employers and foreign nationals to assess eligibility, manage risk, and develop cap-season strategies tailored to this new framework. We encourage prospective sponsors and candidates to begin planning now.

**Disclaimer: This information is presented for the purposes of general education and does not constitute legal advice.*