

A Glimmer of Hope: Potential H-2B Cap Relief on the Horizon

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On March 23, 2018, President Trump signed into law the Consolidated Appropriations Act, 2018 (H.R. 1625) to fund the government until September 30, 2018. Included within the 878 page law is a paragraph authorizing the Secretary of Homeland Security, after consultation with the Secretary of Labor, to issue additional H-2B visas above the 33,000 limit for the second half of Fiscal Year 2018.

The language is identical to what was approved last year, and provides that additional H-2B visas may be granted up to the historic maximum number that were issued in a single year when a returning worker exemption was in place. The top end of that figure is somewhere within the vicinity of 60,000 to 70,000 additional H-2B visas. Notably, under last year's H-2B cap increase, the Departments of Homeland Security and Labor increased the numerical limit by only 15,000.

Employers wishing to apply for the additional H-2B visas may not do so unless and until the Departments of Homeland Security and Labor publish a final rule increasing the numerical limit. Last year, President Trump signed the similar law on May 5, 2017, but the final rule was not published until July 19, 2017. Because the law was signed approximately six (6) weeks sooner this year, there is optimism that the final rule will be published sooner as well. Until the final rule is published, it is uncertain what (if any) additional steps employers will be required to take in order to petition for the additional H-2B visas.

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In the meantime, USCIS continues to accept H-2B petitions that are exempt from, or not counted towards, the Congressionally mandated cap. This includes petitions for the following workers:

- Current H-2B workers in the United States seeking to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam, until Dec. 31, 2019.

If you have questions about the H-2B program, please contact one of the immigration specialists in Koley Jessen's Employment, Labor and Benefits Practice Group.