



August 16, 2010

IS YOUR COMPANY SUBJECT TO INCREASED H-1B AND L-1 FILING FEES?

Calculating the Applicability of the Emergency Border Security Supplemental Appropriations Act

This document includes the following:

- [Introduction](#) to new legislation
- Frequently asked questions ([FAQs](#))
- Preliminary [worksheet](#) to determine whether a company is subject to new fees.

Introduction

On August 13, 2010, President Barack Obama signed the Emergency Border Security Supplemental Appropriations Act of 2010 into law. Although the stated purpose of this legislation is to strengthen national security by funding increased border security measures, *it funds this mandate by substantially raising the filing fees of H-1B and L-1 petitions filed by companies that employ 50 or more employees if more than 50% of these employees are admitted on H-1B or L-1 visas.*

The relevant provisions of the bill provide that:

- The "filing fee and fraud prevention fee" required to be submitted with an application for admission in L-1 status shall be increased by \$2,250 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant's employees are nonimmigrants admitted in H-1B or L-1 status.
- The "filing fee and fraud prevention fee" required to be submitted with an application for admission in H-1B status shall be increased by \$2,000 for applicants that employ 50 or more employees in the United States if more than 50 percent of the applicant's employees are nonimmigrants admitted in H-1B or L-1 status.
- The increased fees set forth above apply to H-1B and L-1 petitions filed by affected employers during the period beginning with enactment of the Emergency Border Security Supplemental Appropriations Act through September 30, 2014.

While these are the provisions that are currently known, there are many related issues that currently remain unresolved. These issues will likely be addressed by U.S. Citizenship and Immigration Services (USCIS), which will be tasked with implementing the new provisions. Included below are some questions addressing important issues that that still remain unclear:

Frequently Asked Questions (FAQs)

When will the new fees be required?

As noted above, President Obama has already signed this bill into law. As the legislation imposes the new fees beginning on the date of enactment, it is likely that the new fees became effective immediately thereafter.

Do these increased fees apply to all employers of H-1B and L-1 personnel?

The increased H-1B and L-1 fees are applicable only H-1B and L-1 petitions filed by employers with a U.S. workforce of more than 50 employees where more than fifty percent of those employees hold H-1B or L-1 status.

How will USCIS count employees to determine whether a company surpasses the 50% threshold for H-1B or L-1 employees?

The statutory language does not include language that specifically addresses how a company would count employees, or whether any differentiation is made for full-time employees versus part-time employees.

Moreover, there is no indication of whether the employees of parent, subsidiary, or affiliated firms are included in this calculation. Nonetheless, based on the language of the statute, Goel & Anderson has prepared a [preliminary worksheet](#) to assist clients in determining whether they may be subject to the increased filing fees. While the methodology used below may not ultimately prove consistent with USCIS' guidance, it represents an educated guess as to how a determination of applicability may be made. Please bookmark and visit the [Goel & Anderson website](#) for future updates. The [preliminary worksheet](#) appears at the end of this document.

Are the increased fees payable at the time of admission or at the time an application is filed?

Although the language of the statute provides for the fee to be submitted with an application for admission, it is expected that the fees will be required at the time an H-1B or L-1 petition is filed.

Does the increased fee apply to L-1 Blanket petitions?

The statutory language suggests that the increased fee amount will be required of all L-1 petitions, irrespective of whether they are filed as individual petitions or under an employer's approved L-1 blanket petition.

What is the amount of the new fees?

The statute raises the "filing fee and fraud prevention and detection fee" for affected employers by \$2,000 for H-1B petitions and \$2,250 for L-1 petitions. It is unclear whether the intent of these provisions is for each petition to require the increased amount of \$2000/\$2250 as a single increase to the required fee or whether the increased amount will be separately added to *both* the filing fee and the fraud detection fee, which would effectively double the tariff to \$4000 for H-1B petitions and \$4500 for L-1 petitions.

As noted above, these issues will likely be resolved by USCIS, which will interpret and implement the new provisions through policy guidance and regulations.

PRELIMINARY WORKSHEET

While the methodology used below may not ultimately prove consistent with USCIS' guidance, it represents an educated guess as to how a determination of applicability may be made. The actual methodology will be provided by Goel & Anderson as soon as guidance becomes available from USCIS.

Thus, using the plain language of the statute, making a determination on whether an employer is subject to the increased filing fees required by the Emergency Border Security Supplemental Appropriations Act of 2010 involves two steps:

Step 1. Calculate the number of Employees

1. Insert the number of U.S. employees of your company
(include all workers (U.S. workers, H-1Bs, L-1s, TNs, EADs, etc.): _____
2. Multiply line 1 (above) by .50, and enter the result: _____
3. Enter the number of all U.S. employees in H-1B status: _____
4. Enter the number of all U.S. employees in L-1 status: _____

Step 2: Apply the numbers to determine applicability of increased fees

- A company is subject to the increased filing fees for H-1B and L-1 filings if the number in line 3 or line 4 is more than the number in line 2 above.
- A company is not subject to the increased filing fees for H-1B and L-1 filings if the number in line 1 is less than 50, or if the number in line 3 and the number in line 4 is less than the number in line 2 above.

Please send the results of your completed worksheet to the attorney you work with at Goel & Anderson. We will work with your company to create a strategy that best serves your interests.

If you have questions about this document, please contact Goel & Anderson's Managing Partner, Vic Goel, at 703.796.9662 or vic.goel@goellaw.com.



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