

## **H-2B** **TEMPORARY WORKERS**

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The H-2B visa allows United States companies to employ skilled or unskilled foreign workers in non-agricultural positions. To qualify for the H-2B program, employers must show that the position it seeks to fill is based on temporary need. The H-2B process is somewhat different than the process for other nonimmigrant visas in that the employer must apply for a labor certification from the United States Department of Labor to show that no U.S. workers are available for the position and that employing foreign workers will not adversely affect similarly employed U.S. workers.

### **What is temporary need?**

The H-2B requires the employer's need for services or labor to be temporary in nature and to fit into one of the following categories:

1. **Seasonal need** – The employer must establish that the service or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature.
2. **Peakload need** – The employer must establish that it regularly employs permanent workers to perform the services or labor at the place of employment but that it needs to supplement its permanent staff on a temporary basis.
3. **Intermittent need** – The employer must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers for a short period.
4. **One-time occurrence** – The employer must establish that it has not employed workers to perform the services or labor in the past and that it will not need workers to perform the services or labor in the future.

### **What is a labor certification?**

Prior to sponsoring a foreign worker for an H-2B visa, employers must demonstrate a lack of sufficient U.S. workers to fill the position and that employing foreign workers will not adversely affect U.S. workers. To do so, an employer undertakes a series of prescribed recruitment steps and requests a certification from the United States Department of Labor.

### **What is the cost to sponsor a foreign worker for an H-2B visa?**

Prospectively, H-2B visa costs are difficult to determine, as labor certification recruitment costs can vary significantly. The H-2B petition has two associated costs.

- \$320 petition filing fee, *plus*
- \$150 fraud prevention fee.

**Note:** A \$1,000 premium processing fee will result in government action on the petition in 15 days.

**For more information,  
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