

H-2B Cap for Fiscal Year 2023 Is Met: A Supplemental Cap Increase Summary

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On March 2, 2023, the U.S. Department of Homeland Security (DHS) [notified](#) the public that the 33,000 H-2B cap positions within the second half of the fiscal year had been reached. DHS indicated that the number of positions for which DHS had received petitions surpassed the number of total H-2B temporary nonagricultural worker visas available for fiscal year (FY) 2023. On March 1, 2023, DHS performed a computer-generated random selection process of the petitions that were received on February 27, 2023, assigning the selected petitions receipt numbers and beginning premium processing services.

Although the H-2B cap was met, DHS had [previously announced](#) that it would increase the numerical limit (or cap) by 64,716 additional H-2B visas, in addition to the 66,000 cap positions for the fiscal year. DHS, in coordination with the U.S. Department of Labor, issued the [joint temporary final rule](#) on December 15, 2022, and the summary of the supplemental increase is the following:

- **First Half of FY 2023: 18,216** immediately available visas limited to *returning workers*—in other words, those workers who were issued H-2B visas or held H-2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality. This cap increase was previously met on [January 31, 2023](#).
- **Early Second Half of FY 2023 (April 1 to May 14): 16,500** visas limited to *returning workers*—in other words, those workers who were issued H-2B visas or held H-2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality.
- **Late Second Half of FY 2023: (May 15 to September 30): 10,000** visas limited to *returning workers*—in other words, those workers who were issued H-2B visas or held H-2B status in fiscal years 2020, 2021, or 2022, regardless of country of nationality.
- **Entirety of FY 2023: 20,000** visas reserved for *nationals of El Salvador, Guatemala, and Honduras (Northern Central American countries) and Haiti*, as attested by the petitioner (regardless of whether such nationals are returning workers).

The H-2B cap increase is available only to U.S. businesses that “are suffering irreparable harm or

will suffer impending irreparable harm (permanent and severe financial loss) if they cannot employ all the H-2B workers that they requested on their Form I-129 petition may file H-2B petitions under this temporary increase.” With this requirement, DHS requires that certain additional steps be followed in order to comply with the [supplemental cap filing requirements](#) before filing the Form I-129, Petition for a Nonimmigrant Worker.

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