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H-1B CAP SEASON PLAYBOOK

HOW NORTHERN VIRGINIA EMPLOYERS PREPARE BEFORE THE REGISTRATION WINDOW OPENS

Prepared by IS Law Firm
2026

The Preparation Gap Nobody Warns You About

Here is what I see repeatedly across Northern Virginia every February: an HR Director at a growing technology company, a General Counsel at a professional services firm, a CHRO at a healthcare-adjacent employer, all approaching the H-1B cap registration window the same way they approached it last year, and the year before that. Same spreadsheet. Same last-minute scramble to confirm prevailing wage levels. Same assumption that the process itself has not changed.

This year, that assumption is a problem. The selection process now weights registrations by wage level. A significant supplemental fee was imposed on certain cases in 2025, but a federal district court has since vacated that policy, and the First Circuit denied the government's request to stay the ruling on July 24, 2026; DHS has said it will comply while it considers next steps. The fee could return depending on further litigation or government action, so it is not something to assume either way. And ICE I-9 enforcement activity, running independently of the cap calendar, has not slowed down to make room for any of it.

None of this means H-1B sponsorship has become impractical for the SMB employer. It means the preparation gap between companies that plan ahead and companies that file reactively has gotten wider, and it is showing up in outcomes, not just process.

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MOST COMPANIES DON'T REALIZE THIS UNTIL REGISTRATION IS DAYS AWAY

Treating H-1B cap registration as an annual HR task rather than a legal filing with strategic implications is not a resourcing shortcut. It is a deferred cost. An inaccurate wage-level attestation, an incomplete prevailing wage analysis, or a registration filed without understanding the current fee framework does not surface as a problem in February. It surfaces months later, when a case is selected and the petition-stage documentation is not ready, or when a Request for Evidence arrives asking questions the company assumed it would never be asked.

THE QUESTION MOST HR DIRECTORS HAVE NOT ASKED YET

You know how many H-1B employees you have. Do you know how each of your open roles would be classified under the current wage-weighted selection framework? Do you know which, if any, of your planned petitions would fall under the current supplemental fee rules? Most HR Directors assume this year's registration will work like last year's.

Will yours?

Why Timing Determines Outcome This Cycle

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Three Reasons This Year's Cap Season Is Different

1 | The Registration Window Is Announced Annually, and the Selection Process Has Changed

USCIS announces the opening and closing dates for H-1B cap registration each fiscal year, and those dates have varied from year to year; it is not a permanently fixed federal calendar. What has not varied is that the window is limited and does not extend: employers must register within the period USCIS announces. What has changed is that selection is no longer a uniform random draw: registrations tied to higher attested wage levels now receive more entries in the selection process. A company that has not reviewed its wage-level strategy against the current framework is registering under assumptions that may no longer hold.

2 | A Cost Consideration Currently on Hold, But Worth Tracking

A significant supplemental fee was imposed on certain new H-1B petitions under a 2025 proclamation, but a federal district court has since vacated that policy, and it is not currently being enforced. The fee remains subject to ongoing litigation and could be reinstated depending on how that plays out. Given how quickly the legal posture is shifting, this is not a rule to build detailed assumptions around; it is a cost exposure worth monitoring case by case, before registration, as the litigation develops.

3 | ICE I-9 Enforcement Does Not Pause for Cap Season

While HR teams are focused on registration, ICE I-9 audit activity continues on its own schedule. Companies whose compliance attention narrows entirely to H-1B during this window can develop I-9 gaps that go unnoticed until an audit notice, which does not wait for a convenient time to arrive.

TIMING OFTEN DETERMINES OUTCOME

For Northern Virginia employers, the combination of a hard registration deadline, a changed selection process, and an active enforcement environment creates a narrow but real window in which preparation makes a measurable difference. The registration window will not move to accommodate a company that starts planning late.

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THE THREE CORE PROBLEMS

I.S. Law Firm Solves During Cap Season

#1

Core Problem

Registering Without a Wage-Level Strategy Leaves Selection Odds on the Table

What It Is

Most SMB employers approach wage-level attestation as a formality: whatever number the payroll system generates gets entered on the registration.

Under the current selection framework, that number now directly affects the odds that a specific registration is selected at all.

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The Risk

A company that under-attests its wage level relative to what it will actually pay is not just leaving selection odds on the table; it may also be creating a documentation inconsistency that surfaces later, when the actual wage paid is reviewed against the attested level at the petition or audit stage.

COMMON MISTAKE



Treating the wage level field as data entry rather than legal strategy. I.S. Law Firm reviews prevailing wage determinations and job classifications for every registration before filing, so the attested wage level is both accurate and does not understate the company's actual pay practices.

PROCESS INTEGRITY WARNING

Wage-level strategy cannot be treated as a standalone selection tactic. USCIS strictly audits SOC code accuracy, worksite geography, and LCA wage-level consistency against the initial registration, and now has explicit authority to deny or revoke a petition where registration information appears engineered to inflate selection odds, or where the wage level, SOC code, or worksite location shifts between registration and the petition stage. Artificially inflating wage levels to gain selection entries, without the SOC code, worksite, and LCA to support it, creates grounds for denial rather than an improved outcome.

A LAWYER WOULD ASK YOU:

For each role you plan to register this cycle, has the prevailing wage level been confirmed against current Department of Labor data for the specific metropolitan area, or is the company relying on a wage level set when the role was first created?

#2

Core Problem

Filing Without Reviewing Fee Exposure First Is a Budget Surprise Waiting to Happen

What It Is

The current supplemental fee framework does not apply uniformly across every H-1B case.

Whether it applies to a specific beneficiary depends on that person's location and immigration status at the time of filing, and the rules in this area continue to be tested and clarified.

The Risk

A company that registers a slate of candidates without reviewing this exposure in advance may find, after a case is selected, that the total cost of moving forward with a specific hire is materially different than budgeted; at a point in the process where the timeline to respond is short.

COMMON MISTAKE

Assuming the fee either applies across the board or does not apply at all, rather than reviewing it case by case. I.S. Law Firm reviews each planned registration against the current fee framework before filing, so the budget conversation happens in February, not after selection.

A LAWYER WOULD ASK YOU:

For each candidate you plan to register, do you know their current location and immigration status well enough to know whether the current supplemental fee framework is likely to apply if they are selected?

#3

Core Problem

Letting Cap Season Absorb All Compliance Attention Creates a Blind Spot Elsewhere

What It Is

HR teams have finite attention.

When registration season arrives, I-9 review, PERM tracking, and general compliance monitoring routinely get deprioritized for several weeks, without anyone deciding that outcome deliberately.

The Risk

ICE I-9 enforcement activity, PERM audit timelines, and DOL investigations do not pause on the same calendar as H-1B cap registration. A Notice of Inspection arriving during the busiest weeks of cap season finds an HR team least prepared to respond to it.

COMMON MISTAKE



Running H-1B cap registration as an isolated project rather than one workstream inside a broader, continuously managed compliance program. I.S. Law Firm manages cap registration and the rest of the employer immigration program under the same team and the same retainer, so nothing goes unattended during the busiest weeks of the year.

A LAWYER WOULD ASK YOU:

If an I-9 audit notice arrived during the two busiest weeks of your cap registration process, does your company have a plan to respond, or would it compete for the same attention your registration needs?

I.S. Law Firm's H-1B Cap Readiness Framework

Pillar 1:
IMMIGRATION RISK AUDIT; DELIVERED BEFORE THE WINDOW OPENS

Every cap-season engagement begins with a review covering your candidate list, current wage-level classifications, prior registration history, and I-9 and PERM posture. The audit is delivered as a written summary with a prioritized action list; not a generic checklist, but a review specific to your workforce and your planned registrations.

Why This Pillar Matters

The registration window does not move. Issues identified after the window opens have far fewer paths to correction than issues identified in advance. I.S. Law Firm delivers this review with enough runway before the window opens to allow for meaningful adjustments.

Pillar 2:

WAGE-LEVEL AND FEE EXPOSURE REVIEW, CASE BY CASE

For each planned registration, we confirm the prevailing wage determination, review the job classification, and assess whether the current supplemental fee framework is likely to apply based on the beneficiary's location and status. You receive a clear picture of both selection strategy and cost exposure before you file.

Why This Pillar Matters

Registering without this review means filing under assumptions about selection odds and cost that may not hold under the current rules. This pillar closes that gap before it becomes a post-selection surprise.

Pillar 2:

INTEGRATED COMPLIANCE, SO CAP SEASON DOES NOT CREATE BLIND SPOTS ELSEWHERE

Your H-1B cap strategy is managed by the same team handling your I-9 compliance, your PERM pipeline, and your broader business law needs, under one retainer. Nothing is set aside for several weeks while attention shifts entirely to registration.

Why This Pillar Matters

A registration-only engagement leaves the rest of your compliance program unattended during the exact weeks your HR team is most stretched. An integrated program is built specifically to prevent that gap.

Documents to Gather Before Your Immigration Risk Audit

The items below are a starting point; which documents matter most, and how they should be organized, depends on your specific workforce and planned registrations.

- [ ] List of candidates the company plans to register this cycle, with current visa status and location for each
- [ ] Current job descriptions and prevailing wage determinations for each role being registered
- [ ] Prior H-1B registration and petition history for each candidate (last 3 years)
- [ ] Current I-9 forms and any internal audit history
- [ ] Active PERM cases and their current stage
- [ ] Corporate structure documents, if the company has undergone or is planning any restructuring
- [ ] Current employment agreements for candidates being registered
- [ ] Payroll records demonstrating actual wages paid to current H-1B employees

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5 Questions to Ask Any Firm You Consider for Cap Season

QUESTION 1:

How do you determine the wage level to attest on a registration, and how do you confirm it is consistent with what the company will actually pay if the case is selected?

QUESTION 2:

Can you walk me through how the current wage-weighted selection process affects registration strategy, in specific terms rather than general summary?

QUESTION 3:

How do you determine whether the current supplemental fee framework applies to a specific case, and when in the process do you review that?

QUESTION 4:

What is your process for keeping I-9 and PERM compliance moving during the weeks your team is focused on cap registration?

QUESTION 5:

If a registered case is selected, what is your process and timeline for preparing and filing the resulting petition?

A FIRM'S ANSWERS REVEAL MORE THAN THEIR CREDENTIALS

Specific, current answers on wage-level strategy and fee exposure tell you more about a firm's cap-season depth than any marketing material. A firm that has not updated its process for the current selection framework will give you last cycle's answers.

5 MISTAKES
That Put Employers at Risk During Cap Season

Attesting a Wage Level Without Reviewing Current Prevailing Wage Data	Prevailing wage data is updated periodically. A wage level set when a role was created may no longer reflect current data for that occupation and location.
Registering a Slate of Candidates Without a Case-by-Case Fee Review	The current supplemental fee framework does not apply uniformly. Reviewing it after selection, rather than before registration, turns a planning question into a budget emergency.
Letting I-9 Review Lapse Entirely During Registration Season	A several-week gap in compliance attention is exactly the kind of gap an ICE audit notice does not wait for.
Assuming Last Year's Registration Approach Still Applies	The selection process changed. A registration strategy built for a purely random draw is not the same strategy that makes sense under a wage-weighted framework.
Treating the Petition Stage as Someone Else's Problem Until Selection Happens	The petition filing window after selection is short. Employers who wait until selection to think about petition-stage documentation are compressing a process that should have started months earlier.

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Frequently Asked Questions

We have registered for the H-1B cap before without outside counsel. Why would this cycle be different?

The registration mechanics you are familiar with are not identical to the current framework. The selection process now weights wage level, and a new fee consideration applies to some cases. A review against the current rules, even for a company with prior registration experience, can identify gaps that were not relevant in prior cycles.

Does a higher wage-level attestation guarantee selection?

No. It increases the number of entries a registration receives in the selection process relative to a lower wage level, within a system that remains subject to a numerical cap. No outcome in the selection process can be guaranteed for any registration.

How do we know if the new supplemental fee applies to our planned hires?

It depends on the beneficiary's location and immigration status at the time of filing, among other fact-specific considerations, and this area continues to be clarified. I.S. Law Firm reviews each case individually rather than applying a general rule.

Our I-9 files have not been reviewed in over a year. Should we wait until after cap season to address that?

Generally, no. ICE enforcement activity does not pause for cap season, and a short review now is typically less disruptive than a delayed one. We can review both in the same engagement.

What happens if our registered case is not selected this year?

The registration is not selected, and the company may register again in a subsequent cap cycle if the candidate remains eligible. Alternative visa categories may be worth discussing depending on the individual's background and the role; that is a case-by-case conversation.

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The Decision That Changes This Cycle

Every Northern Virginia employer that has walked into H-1B cap registration with a clear wage-level strategy and a case-by-case understanding of fee exposure made the same decision first: they started the review before the window opened, not the week it did.

The Immigration Risk Audit that starts this process is delivered as a written summary with a prioritized action list, so you know exactly where your registrations, your I-9 files, and your PERM pipeline stand heading into the window.

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Assess Your H-1B Readiness.

Act Before The Window Opens.

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