



## HR Highlights August 2023

### Employment Visas

Given the recruiting challenges many state agencies are experiencing, DHRM is fielding questions regarding work visas and potential sponsorships. DHRM's hiring policy requires only that an applicant ***be authorized to work in the US***. In order for a non-citizen to work in the United States, they must present a valid employment authorization issued by the [U.S. Citizenship and Immigration Services](#). Some employment visas might require the employer to file an application or petition on the non-citizen's behalf while others permit the non-citizen to file a self-petition on their own behalf. Only a few nonimmigrant classifications allow non-citizens to work in the U.S. without an employer having first filed a petition on the individual's behalf. Such classifications include the [Temporary Workers Visas](#) for certain nonimmigrant classification. Several of these classifications are associated with treaties for commerce and navigation so please check the USCIS website for a current list of countries for whom this is applicable. Another alternative is the [H-1B Visas](#) which is applicable to specialty occupations.

Agencies should seek advice from an immigration attorney regarding the visa processes, for guidance in meeting the labor-intensive requirements of the agency and to understand the financial commitments absorbed by the agency in entering sponsorship. Agencies must be able to document to the US Department of Labor that you've been unsuccessful in locating qualified applicants to perform specialized work among those authorized to work in the U.S. This must include multiple recruitments that fail to yield qualified applicants for roles engaged in specialized work. The agency may be liable to pay for travel expenses of returning the employee (and dependents) to their home nation if the employee's performance is not satisfactory, if the position is eliminated, or if immigration requirements are not met. In addition, agencies may be subject to paying a prevailing wage established by the U.S. Department of Labor for certain job roles. This requirement may create pay inequity for those who are authorized to work in the United States.

Immigration law is extremely specialized, highly complex and constantly changing. It is important to note that the Attorney General's office does not have immigration attorneys on staff. They do have contracts with private law firms to provide this counsel. Agencies must contact the AG's Office to identify these resources and expect to pay for the immigration attorney's counsel or other services to ascertain if sponsorship is an option for the vacancy or if the financial and labor efforts on the part of the agency are appropriate.