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DHS Rule and H-1B Third Party Placement

The Department of Homeland Security (DHS) recently released [an interim final rule](#) changing the framework for third party placement as it pertains to H-1B non-immigrant visas. Third party placement is a common staffing practice in many American industries, especially in the IT consulting industry. Third party placement involves an H-1B petitioner placing an H-1B employee at a third-party client site to perform services. The rule, which was published in the Federal Register on October 8, 2020, will take effect on December 7, 2020. This new rule will affect any H-1B petition filed on or after December 7, unless the rule is enjoined.

The new rule codifies the requirement that an H-1B petitioner must submit evidence such as contracts, work orders, or other similar evidence to establish that the petitioner will have an employer-employee relationship with the H-1B employee placed at a third-party worksite. This evidence must also prove that the H-1B employee will perform services in a specialty occupation at the third-party worksite. A third-party worksite is defined as a place other than the H-1B employee's residence in the U.S. that is not owned, leased, or operated by the petitioner.

This rule limits the H-1B validity period to one year for any third-party placements. This is a change from the three years allowed under the current structure. The new rule also codifies DHS' authority to perform site visits at third-party worksites and grants the department authority to deny or revoke a petition if a third-party worksite refuses to cooperate with a site visit.

Interested parties may comment on this new rule, but comments will not be considered before the rule takes effect.

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