



# IMMIGRATION UPDATE - NOVEMBER 20, 2023

*Posted on November 20, 2023 by Cyrus Mehta*

## Headlines:

**[DHS Increases FY 2024 Limit on H-2B Nonagricultural Workers and Provides Portability](#)** – In consultation with the Department of Labor, the Department of Homeland Security is increasing the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year 2024. 20,000 visas are reserved for nationals of Guatemala, El Salvador, Honduras, Haiti, Colombia, Ecuador, and Costa Rica.

**[DOJ Reaches Several Immigration-Related Discrimination Settlement Agreements](#)** – Following on the heels of the Department of Justice's (DOJ) \$25 million settlement agreement with Apple Inc., DOJ has settled immigration-related discrimination cases with a New York City health care system and a staffing agency with offices nationwide.

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## Details:

### **DHS Increases FY 2024 Limit on H-2B Nonagricultural Workers and Provides Portability**

Effective November 17, 2023, in consultation with the Department of Labor (DOL), the Department of Homeland Security (DHS) is increasing the total number of noncitizens who may receive an H-2B nonimmigrant visa by up to 64,716 for fiscal year (FY) 2024. 20,000 visas are reserved for nationals of Guatemala, El Salvador, Honduras, Haiti, Colombia, Ecuador, and Costa Rica. The visas will be available "only to businesses that are suffering or will suffer impending irreparable harm, as attested by the employer." DHS is also providing temporary portability flexibility, explained in more detail in the temporary rule.

The supplemental visas will be distributed in several allocations and timeframes, which are summarized in the temporary rule. DHS said it will not accept any H-2B petitions under these allocations after September 16, 2024, and will not approve any such H-2B petitions after September 30, 2024. The provisions related to portability are available only to petitioners and H-2B nonimmigrant workers initiating employment through the end of January 24, 2025.

DOL's Office of Foreign Labor Certification is accepting comments on the temporary rule until January 16, 2024.

**Details:**

- DOL/DHS [temporary rule](#), 88 Fed. Reg. 80394 (Nov. 17, 2023).

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**DOJ Reaches Several Immigration-Related Discrimination Settlement Agreements**

Following on the heels of the Department of Justice's (DOJ) \$25 million [settlement agreement](#) with Apple Inc., DOJ has settled immigration-related discrimination cases with a New York City health care system and a staffing agency with offices nationwide. Below are highlights of the settlements:

**NYC Health and Hospitals Corporation.** On November 16, 2023, DOJ announced a settlement agreement with New York City Health and Hospitals Corporation (NYCHH), which provides health care services to more than a million New Yorkers. The agreement resolves DOJ's determination that NYCHH violated the anti-discrimination provision of the Immigration and Nationality Act (INA) when it rejected a worker's valid employment authorization document (EAD) based on the worker's national origin.

The worker's EAD had been extended automatically under Temporary Protected Status (TPS). DOJ determined that NYCHH rejected the valid document and delayed the onboarding of the worker based on its incorrect assumption that the worker's country of birth listed on her EAD had to be the same as the country designated for TPS. DOJ pointed out that Federal Register notices that automatically extend a TPS worker's permission to work explain that the worker does not have to show additional documentation or prove citizenship status, and that the country of birth listed on the worker's documentation does not have to match the TPS-designated country.

Under the terms of the agreement, NYCHH will pay back pay to the affected worker and a civil penalty to the United States, train its staff on the anti-discrimination provision, review and revise its employment policies and training materials, and be subject to departmental monitoring for three years.

Kforce Inc. On November 15, 2023, DOJ announced a settlement agreement with Kforce Inc. (Kforce), a staffing agency with 36 offices across the United States. The agreement resolves DOJ's determination that Kforce discriminated against non-U.S. citizens with permission to work in the United States and excluded them from job opportunities based on their citizenship status.

DOJ's investigation determined that from at least March 1, 2019, to February 28, 2022, Kforce distributed job advertisements that contained unlawful hiring restrictions based on citizenship status or otherwise screened out candidates based on their citizenship status.

Under the terms of the settlement, Kforce will pay \$690,000 in civil penalties to the United States and set aside \$230,000 to compensate affected workers. The agreement also requires Kforce to train its personnel on the INA's requirements, revise its employment policies, and be subject to departmental monitoring and reporting requirements.

#### **Details:**

- [DOJ release](#) re NYC Health Care System settlement (Nov. 16, 2023).
- [Settlement Agreement](#) with NYC Health Care System (Nov. 16, 2023).
- [DOJ release](#) re Kforce Inc. (Nov. 15, 2023).
- [Settlement Agreement](#) with Kforce Inc. (Nov. 15, 2023).

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### **Firm in the News**

[Cyrus Mehta](#) was quoted by *Forbes* in [Apple Settles \\$25 Million DOJ Immigrant Lawsuit, Regardless of PERM](#). Mr. Mehta said, "The safest course is for employers to hew as closely as possible to their non-PERM recruitment practices. Thus, while it is lawful for employers to ask applicants to send resumes only by postal mail under the PERM regulations, if the employer otherwise allows applicants to send their resumes electronically, the employer should be consistent and require applicants even responding to PERM recruitment to send their resumes electronically." He said employers are

caught between the conflicting requirements of two federal agencies.

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