

A Win for Employers: Federal District Court Finds \$100,000 H-1B Visa Petition Fee is Unlawful

Insights for Employers Alert | 1 min read

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In a decision favorable to US employers, universities, and healthcare providers, US District Court Judge Leo Sorokin, District of Massachusetts, ruled that the Trump Administration's \$100,000 H-1B visa petition fee is unlawful.

The ruling directly addresses a lawsuit co-led by Massachusetts Attorney General Andrea Joy Campbell and California Attorney General Rob Bonta, alongside a coalition of 20 states.

Details of the Ruling

- **The court held that the massive fee expansion violated the Administrative Procedures Act (APA).**
 - The court agreed with the plaintiffs that the Department of Homeland Security (DHS) bypassed mandatory notice-and-comment procedures, preventing the public and affected businesses from weighing in on the rule before it was implemented.
 - Historically, Congress has mandated that H-1B fees must remain reasonably tied to the actual administrative cost of processing the visas. **A \$100,000 surcharge vastly exceeded those costs.**
- **Furthermore, Judge Sorokin held that the fee was a tax on the H-1B program, which is unconstitutional because the President has no authority to levy a tax absent a statutory delegation by Congress, and the government had not shown that Congress delegated its taxing power to the President through the Immigration and Nationality Act.**

Significance for Employers

While this development gives businesses some immediate relief, immigration litigation remains highly fluid. The federal government is expected to seek an emergency stay or appeal this ruling.

Please feel free to reach out to Hinshaw’s Immigration Team if you have any questions about the implications of this decision.

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