

## **Fact Sheet #62S: What is a willful violator employer?**

This fact sheet provides general information concerning willful violator employers under the H-1B program. Special attestations applicable to H-1B-dependent and willful violator employers sunset on October 1, 2003, but were restored effective March 8, 2005 by the H-1B Visa Reform Act of 2004.

### **What is a “willful violator employer”?**

“Willful violator” or “willful violator employer,” means an employer that meets all of the following standards:

- A finding of violation by the employer is entered in either of the following two types of enforcement proceeding:
  - A Department of Labor proceeding under the Immigration and Nationality Act (INA) § 212(n)(2); (8 U.S.C. § 1182(n)(2)(C)); or
  - A Department of Justice proceeding under INA § 212(n)(5); (8 U.S.C. § 1182(n)(5).)
- The agency finds that the employer has committed either a willful failure or a misrepresentation of a material fact (two of the Labor Condition Application (LCA) attestations; and
- The agency’s finding is entered on or after October 21, 1998.

A willful violator employer must comply with additional attestations under any LCA it files within five years of the willful violation finding. The only exception is when an LCA is filed for and used exclusively for exempt H-1B workers (see [WH Fact Sheet #62Q](#)).

Willful violators and H-1B-dependent employers (see [WH Fact Sheet #62C](#)) which file an LCA must meet the following additional requirements:

- The employer has not displaced a U.S. worker at the time of filing an H-1B visa petition (see [WH Fact Sheet #62N](#));
- Before placing an H-1B worker at a secondary employer’s work site, the employer has inquired as to the secondary employer’s intent to displace a U.S. worker (see [WH Fact Sheet #62N](#));
- The employer has taken good faith steps to recruit U.S. workers (see [WH Fact Sheets #62O](#) and [#62P](#)); and
- The employer has offered the job to any equally or better qualified U.S. worker who applies for the job for which the H-1B worker is sought (see [WH Fact Sheets #62O](#) and [#62P](#)).

Willful violators are subject to random investigations by the Department of Labor for a period of up to five years from the date that the employer is determined to be a willful violator. The Wage and Hour Division maintains a current list of such [H-1B willful violators](#).

All requirements listed above can be found in 20 CFR § 655 Subparts H & I and the Immigration and Nationality Act § 212(n).

### Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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