

Fact Sheet #62I: Must an H-1B employer pay for nonproductive time?

This fact sheet provides general information concerning the payment for nonproductive time under the H-1B program.

H-1B workers must be paid the required wage rate for all nonproductive time caused by conditions related to employment, such as lack of assigned work, lack of a permit, or studying for a licensing exam.

No payment is required under the H-1B program for nonproductive time due to reasons not related to employment, such as a worker's voluntary absence from work or a hospitalization, etc. Employers, however, remain obligated to comply with the Immigration and Nationality Act or any other statute relating to employment (such as the Family and Medical Leave Act).

When does the obligation to pay for nonproductive time start?

Non productive pay requirements begin with the earliest of the applicable following events:

- The H-1B worker “enters into employment” with the sponsoring employer, which occurs when the worker first makes him/herself available for work or otherwise comes under the control of the employer, such as reporting for orientation or studying for a licensing exam;
- No later than thirty (30) days after the H-1B worker is first admitted into the U.S. pursuant to the H-1B petition, whether or not the H-1B worker has “entered into employment”;
- No later than sixty (60) days after the date the H-1B worker becomes eligible to work for the employer (the approval date found on the U.S. Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service) Notice of Action, Form I-797), whether or not the H-1B worker has “entered into employment”; or
- For an H-1B worker already in the United States (see [WH Fact Sheet #62W](#)), on the date of the filing of the Petition for a Nonimmigrant Worker (Forms I-129/I-129W) by the sponsoring employer under the portability provisions (see 8 U.S.C. § 1182(n)).

How much nonproductive pay is due and for what number of hours?

- Full-time salaried workers must be paid the full amount of the required wage rate;
- Full-time hourly workers must be paid for 40 hours or such other number of hours as the employer can demonstrate as full-time employment for its hourly employees;
- Part-time workers must be paid for at least the number of hours indicated on the Forms I-129/I-129W petition and incorporated by reference on the Labor Condition Application (LCA) (Form ETA 9035 and/or ETA 9035E); and/or

- Part-time workers with a range of hours listed on the Forms I-129/I-129W must be paid for at least the average number of hours normally worked, provided the average is within the range indicated. In no event should the worker be paid for fewer than the minimum number of hours indicated for the range of part-time employment.

What rate of pay is used for nonproductive time?

Nonproductive time must be paid at the required wage rate for the occupation listed on the H-1B worker's LCA (see [WH Fact Sheet #62G](#)).

When does the obligation to pay for nonproductive time stop?

Payment for nonproductive time is not required after a bona fide termination of employment. The best evidence of such termination is the employer's notification to the USCIS that:

- The employment relationship has been terminated;
- The Petition should be cancelled; and
- The employee has been provided with payment for transportation home where required by USCIS regulations.

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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