

Fact Sheet #62W: What is “Portability” and to whom does it apply?

This fact sheet provides general information concerning the “portability” provision under the H-1B program (see 8 U.S.C. § 1184(n)).

What does “portability” mean?

The portability provision is intended to preserve the legal status of an H-1B nonimmigrant who is already in the United States. Portability allows the employed H-1B worker to enter into employment with a new employer provided that:

- The new employer has filed a nonfrivolous Petition for a Nonimmigrant Worker (Forms I-129/ I-129W) for the employment of the H-1B worker before the date of expiration of the worker’s authorized period of stay; and
- The new employer has submitted, along with its petition, an unexpired, approved Labor Condition application (LCA) covering the same work that the individual is being hired to perform. The new employer may already hold an applicable LCA, or may have sought and received a new LCA in order to submit the petition.

Who is authorized to use the portability provision?

An H-1B nonimmigrant who is employed under a valid LCA with one employer, is authorized to accept new employment upon the filing by the prospective employer of a new petition on the H-1B worker’s behalf, even though the new petition has not yet been adjudicated.

What are the benefits of the portability provisions?

The portability provision enables an H-1B worker to change to a different job without the risk of being “out of status.” The provision also enables an employer to employ an H-1B nonimmigrant worker sooner than the employer would otherwise be able to utilize the services of that worker. Additionally, the provision provides a basis for determining the date upon which the H-1B worker’s employment with the previous employer has terminated (i.e., the date upon which the worker “enters into employment” with the new employer), so that the previous employer will not be held responsible for a non-productive time (“benching”) violation (see [WH Fact Sheet #62I](#)).

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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