U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division

(Revised July 2008)

Fact Sheet #62C: Who is an H-1B-dependent employer?

This fact sheet provides general information concerning H-1B-dependent 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.

An employer is considered H-1B-dependent if it has:

- 25 or fewer full-time equivalent employees and at least eight H-1B nonimmigrant workers; or
- 26 - 50 full-time equivalent employees and at least 13 H-1B nonimmigrant workers; or
- 51 or more full-time equivalent employees of whom15 percent or more are H-1B nonimmigrant workers.

When must an employer determine dependency?

The employer must determine dependency when filing either:

- A Labor Condition Application (LCA); or
- A Petition for a Nonimmigrant Worker (Forms I-129/I-129W) based on an LCA; or
- A request for an extension of H-1B status for a nonimmigrant worker based on an LCA.

Employers with readily apparent status concerning H-1B-dependency need not calculate that status.

Is there a simple calculation to determine dependency?

Yes. An employer whose dependency is not readily apparent or is borderline may use the "*snap-shot*" test. The *snap-shot* test requires a comparison of the total number of all H-1B workers to the number of the total workforce (including H-1B workers). If a small employer's *snap-shot* calculation shows that the employer is dependent, the employer must then fully calculate its dependency status. If a large employer's calculation exceeds 15% of its workforce, that employer must fully calculate its dependency status.

If an employer must fully calculate dependency, how is this performed?

This full calculation must take into consideration the total number of H-1B workers (a "head count" of both full-time and part-time workers) and the employer's total work force in the United States (including both U.S. workers and H-1B workers) and must be measured according to full-time equivalent employees.

How should an employer using the Internal Revenue Code (IRC) "single employer" definition determine dependency?

An IRC "single employer" which concludes that it is not H-1B-dependent shall perform the *snap- shot* test (and/or full calculation if appropriate) described above. The Wage and Hour Division, however, will not assess penalties for employers who do not perform the *snap-shot* test where all of the entities that make up the single employer have readily apparent non-dependent status. Note that this enforcement policy will not affect the right of an aggrieved party to challenge the employer's failure to perform the *snap-shot* test.

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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