

Fact Sheet #62Q: What are “exempt” H-1B nonimmigrants?

This fact sheet provides general information concerning exempt H-1B nonimmigrants 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 exempt H-1B nonimmigrant is an H-1B worker who meets one of the following statutory standards:

- Receives \$60,000 annual wages; or
- Has attained a master’s or higher degree (or its equivalent) in a specialty related to the intended H-1B employment.

What are the advantages to an employer in hiring an exempt H-1B?

H-1B-dependent and willful violator employers which employ only exempt H-1B workers on a Labor Condition Application (LCA) are relieved from the additional obligations with which they would otherwise be required to comply: non-displacement, recruitment, and hiring (see [WH Fact Sheets #62C](#), [#62M](#), [#62O](#), and [#62P](#)).

Is an exempt H-1B worker entitled to the protections of the H-1B program?

Yes. Every H-1B nonimmigrant (whether or not an “exempt” worker) is covered by all the provisions of the statute and regulations, including wages, benefits, and whistleblower protections.

How is the \$60,000 annual wage to be determined?

The H-1B nonimmigrant, whether full-time or part-time, must actually receive hourly wages or an annual salary totaling at least \$60,000 in the calendar year. The salary must be paid “cash in hand” and “free and clear.” It must also be paid when due. Cash bonuses and similar compensation may be counted or credited toward the \$60,000 only if payment is assured.

- Employer contributions or costs for benefits such as health insurance, life insurance, and pension plans may not be counted toward the \$60,000.
- The full \$60,000 annual wages or salary must be received by the employee in order for the employee to have “exempt” status. The wages or salary required for exempt status cannot be decreased or prorated based on the employee’s part-time work schedule. An H-1B nonimmigrant working part-time, whose actual annual compensation is less than \$60,000, would not qualify as exempt on the basis of wages, even if the worker’s earnings, if projected to a full-time work schedule, would theoretically exceed \$60,000 in a year.
- Where an H-1B nonimmigrant works full-time but for less than a full year, the employee must receive at least the appropriate *pro rata* share of the \$60,000 in order to be exempt (e.g., an employee who resigns after three months must be paid at least \$15,000).

How is the “master’s or higher degree (or its equivalent) in a specialty related to the intended employment” to be determined?

“Master’s or higher degree (or its equivalent),” means a foreign academic degree from an institution which is accredited or recognized under the law of the country where the degree was obtained, and which is equivalent to a master’s or higher degree issued by a U.S. academic institution. The equivalence to a U.S. academic degree cannot be established through experience or through demonstration of expertise in the academic specialty. No “time equivalency” or “performance equivalency” will be recognized as substituting for a degree issued by an accredited academic institution. “Specialty related to the intended employment,” means that the academic degree is in a specialty which is generally accepted in the industry or occupation as an appropriate or necessary credential or skill for the person who undertakes the employment in question.

What if the employer makes the designation of “exempt” H-1B nonimmigrants on the LCA, but is found to have used the LCA to employ nonimmigrants who are, in fact, not exempt?

The employer will be subject to a finding that it failed to comply with the nondisplacement and recruitment obligations, and may be assessed appropriate remedies and penalties that may include an assessment of civil money penalties as well as debarment.

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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