

## **Fact Sheet #62: What are the requirements to participate in the H-1B program?**

This fact sheet provides general information concerning program requirements under the H-1B program.

The Immigration and Nationality Act (INA) as amended by the Immigration Act of 1990 (IMMACT) and various subsections (e.g., § 212(n) and § 214) of the INA (8 U.S.C. § 1182(n); § 1184)) among other things, created the H-1B classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. The intent of the H-1B provisions is to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the employment of qualified individuals who are not otherwise authorized to work in the United States. The law establishes certain standards in order to protect similarly employed U.S. workers from being adversely affected by the employment of the nonimmigrant workers, as well as to protect the H-1B workers.

All employers who employ an H-1B nonimmigrant must comply with the following:

- Maintain a Labor Condition Application (LCA) (Form ETA 9035 and/or ETA 9035E) with true and accurate information for each permanent work site;
- Pay the H-1B worker the “required wage rate” applicable to each permanent work site;
- Offer the H-1B worker the same working conditions and fringe benefits that are offered to similarly employed U.S. workers;
- Not employ an H-1B worker where there is a strike/lockout in progress in the worker’s occupation;
- Notify workers or their bargaining representative of the intent to employ an H-1B worker at any location where other workers are in the same occupational classification for which an H-1B worker is sought or placed;
- Provide a copy of the LCA to each H-1B worker;
- Not allow or require the H-1B worker to pay the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service) petition filing fee;
- Not require the H-1B worker to pay any early cessation penalty;
- Not retaliate or discriminate against any worker who (a) discloses information that (the worker believes) shows a violation of this program or (b) cooperates with any proceeding concerning the employer’s compliance with this program;
- Provide the H-1B worker with payment for all work-related expenses; and
- Notify the USCIS of any changes in the H-1B nonimmigrant’s work status (e.g., wherever the Department of Labor requires a new LCA or when the work is terminated, whatever the reason is).

### **Additional requirements for H-1B-dependent or willful violator employers with LCAs filed prior to October 1, 2003 and after March 7, 2005.**

- No displacement of a similarly employed U.S. worker beginning 90 days before and ending 90 days after the filing of an H-1B visa petition;
- Mandatory inquiry as to the secondary employer’s action or intent to displace a U.S. worker beginning 90 days before and ending 90 days after the placement of an H-1B worker with the secondary employer

before placing an H-1B worker at a secondary employer's work site to perform services, where there are indicia of an employment relationship between the H-1B worker and the other employer (thus possibly affecting the jobs of U.S. workers employed by the other employer), and

- Recruitment of U.S. workers before seeking an H-1B worker.
- Offer employment to an equally or better qualified U.S. applicant for the job for which H-1B workers are sought (enforced by the Department of Justice).

The above special additional requirements 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.

**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, 1-866-4US-WAGE (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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