

Fact Sheet #62A: Changes made by the H-1B Visa Reform Act of 2004

This fact sheet summarizes changes in the H-1B program made by the H-1B Visa Reform Act of 2004.

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.

The H-1B Visa Reform Act of 2004 reinstated certain enforcement and fee requirements of the H-1B law that had sunset on September 30, 2003, and amended the law in several other respects:

- The H-1B-dependent/willful violator employers' special attestation requirements are reinstated as of March 8, 2005.

Such employer must attest on the Labor Condition Application (LCA) that it will:

- Not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of petition filing;
 - Not place any H-1B worker with any other employer or at another employer's worksite unless first making a good faith inquiry of the employer at the secondary worksite and obtaining assurances that the other employer will not displace a U.S. worker within 90 days before or after placement of the H-1B worker;
 - Take good faith steps to recruit a U.S. worker for the position for which the H-1B worker is sought; and to offer the job to any U.S. worker who applies for the job and is equally or better qualified.
- The 95% rule is eliminated.
 - Employers must pay at least 100% of the prevailing wage.
 - Survey wage levels are increased from two to four.
 - Surveys used or made available by the Department of Labor (DOL) for prevailing wages purposes will include four levels commensurate with experience, education, and level of supervision.
 - DOL investigative authority is expanded.

- DOL may now investigate when the Secretary of Labor personally certifies that there is reasonable cause to believe that the employer is not in compliance and authorizes the investigation, or when a credible source provides information that includes allegations that within the past 12 months an employer has willfully failed to meet an LCA condition, has engaged in a pattern or practice of violations, or has committed a substantial failure to meet an LCA condition that affects multiple employees.
- New Good Faith Compliance Defense.
 - H-1B employers are considered to have complied in good faith with the program requirements notwithstanding a “technical or procedural failure” to meet such requirements, if the employer:
 1. Made a good faith attempt to comply;
 2. Voluntarily corrected the failure within 10 business days of having it explained by the DOL or another enforcement agency; and
 3. Has not engaged in a pattern or practice of willful violations.
- Recognized Industry Standards Defense.
 - H-1B employers that have established that the prevailing wage used was calculated consistent with recognized industry standards and practices will not be assessed fines or penalties for prevailing wage violations.
- The training and processing fee is modified and made permanent for nonexempt employers as of December 8, 2004.
 - H-1B employers with 25 or fewer full-time employees will pay \$750; H-1B employers with more than 25 full-time employees will pay \$1500.
- New \$500 anti-fraud fee for enforcement effective March 8, 2005.
 - All employers that file an H-1B petition will now pay a \$500 fraud prevention and detection fee.

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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