

## **Fact Sheet #62G: Must an H-1B worker be paid a guaranteed wage?**

This fact sheet provides general information concerning the payment of wages for an H-1B worker under the H-1B program.

The H-1B employer must pay its H-1B worker(s) at least the “required” wage which is the higher of the prevailing wage or the employer’s actual wage (in-house wage) for similarly employed workers.

### **What is the prevailing wage?**

The prevailing wage is the wage rate set for the occupational classification in the geographical area of employment by:

1. A union contract which contains a wage rate applicable to the occupation; or
2. For an occupation not covered by a union contract, the weighted average of wages paid to similarly employed workers (i.e., workers having substantially comparable jobs in the occupational classification) in the geographic area of employment.

### **Where can I obtain prevailing wage information?**

A common prevailing wage source is the State Workforce Agency (formerly the State Employment Security Agency) operating in each state. A listing of state offices can be found at the following web address: <http://www.ows.doleta.gov/>.

### **What is the employer’s actual wage?**

The actual wage is the wage rate paid by the employer to all individuals with experience and qualifications similar to the H-1B nonimmigrant’s experience and qualifications for the specific employment in question at the place of employment. The actual wage established by the employer is not an average of the wage rates paid to all workers employed in the occupation. If there are no similarly employed workers, the actual wage is the wage paid to the H-1B worker.

### **Can the H-1B worker’s wage be either hourly or salaried?**

Yes.

### **Is there a guaranteed minimum number of hours that must be paid?**

Yes. The guaranteed minimum number of hours to be paid for all periods to the H-1B worker is the number of hours that the employer reports on the Petition for Nonimmigrant Worker (Form I-129/I-129W), item 5. The guaranteed pay begins when the worker enters into employment, but in no case later than 30 days after the H-1B worker enters the U.S. to take the job or, where the worker is already in the U.S., 60 days after the H-1B worker is authorized to work for the employer (see [WH Fact Sheet #62I](#)).

**Must the employer pay the guaranteed minimum hours if no work is provided?**

Yes. The employer must pay the guaranteed minimum hours unless the H-1B worker is unavailable for work because of non-work related factors, such as the worker's own voluntary request for time off, or in other circumstances where the worker is unable to work.

**If an H-1B worker is paid less than the required wage rate (the higher of prevailing or actual wage), does the program provide for any recovery of the required wage?**

Yes. The Department of Labor's Wage and Hour Division enforces the H-1B wage provisions and has the authority, after an opportunity for a hearing, to order the employer to pay the required wage rate.

**Are H-1B workers covered by any other Federal wage requirements?**

Yes. Other Federal wage statutes apply to H-1B workers in the same manner as any U.S. worker.

**Where to Obtain Additional Information**

The Department of Labor has a web site dedicated to immigration programs, including the H-1B program. This site contains links to a press release pertaining to the regulations, and to the Labor Condition Application, Form ETA 9035 and/or ETA 9035E: <http://www.dol.gov/esa/whd/immigration/index.htm>

**All requirements listed above can be found in 20 CFR § 655 Subparts H & I and the Immigration and Nationality Act § 212(n).**

**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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