

## Fact Sheet #62J: What does “place of employment” mean?

This fact sheet provides general information concerning “place of employment” under the H-1B program.

The term “place of employment” means the worksite or physical location where an H-1B nonimmigrant worker actually performs his or her work. A Labor Condition Application (LCA) (Form ETA 9035 and/or ETA 9035E) must be filed for the geographic area where an employer intends an H-1B worker to be employed. The LCA will apply to any worksites within this “area of employment,” and thus will control the prevailing wage determination, posting, and other worksite-related obligations of an employer. Certain temporary work performed by an H-1B worker, however, does not require an LCA for that geographic area so long as the work meets the circumstances discussed below.

### **Are there locations where an H-1B worker temporarily performs job duties that will not be considered a worksite and where no new LCA needs to be filed?**

Yes. A location where an H-1B worker temporarily performs job duties will not be considered a worksite and no new LCA needs to be filed when the worker travels to a location (1) for employee developmental activity or (2) to fulfill the requirements of a particular job function. With regard to the latter activity, each of the following conditions must be met if the employer chooses to use an existing LCA (i.e., one that applies to a different geographic area):

- The H-1B worker’s presence at the different location is casual and on a short-term basis (i.e., any single visit does not exceed five (5) consecutive workdays for any worker who travels frequently or ten (10) workdays for any worker who travels occasionally);
- The H-1B worker is not at the location as a “strikebreaker”; and
- The nature and duration of the H-1B worker's job function (rather than the nature of the employer’s business) mandates his/her short-time presence at a different location. For example, in the following situations, an employer could choose to rely on an existing LCA:
  - A computer engineer is sent out to customer locations to “troubleshoot” complaints regarding software malfunctions;
  - A sales representative makes calls on prospective customers or established customers within a “home office” sales territory;
  - A manager monitors the performance of out-stationed employees; or
  - A physical therapist provides services to patients in their homes within a geographic area of employment.

### **Must the employer have an LCA on file for each place of employment?**

Yes. The employer must have an LCA on file for each place of employment, with the exception of the short-term placement option (see [WH Fact Sheet #62K](#)). By filing the LCA, the employer establishes the prevailing wage for the worksite, provides notice to workers, and specifies the scope of the strike/lockout prohibition.

## **What is the geographic area of intended employment?**

The geographic area of intended employment means the area within normal commuting distance of the place (address) of employment, or worksite, where the H-1B nonimmigrant is or will be employed.

## **If the employer requires the H-1B worker to move from one worksite to another worksite within a geographic area of intended employment, must the employer obtain an LCA for each worksite within that area of intended employment?**

No. The employer need not obtain a new LCA for another worksite within the geographic area of intended employment where the employer already has an existing LCA for that area. However, while the prevailing wage on the existing LCA applies to any worksite within the geographic area of intended employment, the notice to workers must be posted at each individual worksite, and the strike/lockout prohibition also applies to each individual worksite.

## **Is it important that the employer carefully identify the place (address) of employment?**

Yes. The Wage and Hour Division would seriously question any situation which appears to be contrived or abusive in determining the H-1B worker's geographic "place of employment." The Wage and Hour Division would seriously question any situation where the H-1B worker's purported "place of employment" is a location other than where the worker spends most of his/her work time, or where the purported geographic "area of employment" does not include the location where the worker spends most of his/her work time.

**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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