



Guidelines/Procedures

Subject: Employment of Workers and Trainers in H-1B Nonimmigrant Status

Guideline/Procedure for AR#: 6.05.008

Date Effective: 12/02/98

1. If a hiring committee recommends a candidate with an H-1B status, the administrator should contact the Office of Human Resources to discuss the proposed candidate.
2. The Office of Human Resources shall determine the feasibility of employing the candidate. Once it is determined that the candidate may be hired, the Office of Human Resources shall coordinate the process to secure the H-1B visa.
3. The candidate may be asked to pay for legal fees, application fees and other fees for processing the visa application.
4. **Prevailing Wage Determination:** The Office of Human Resources will request a prevailing wage determination from the Texas Workforce Commission (TWC) in Austin to comply with the requirement that H-1B non-immigrants will be paid at least the **prevailing wage level** for the occupation in the area of intended employment **or** the **actual wage level** paid by the employer to all other individuals with similar experience and qualifications for the specific employment, **whichever is higher**. The hiring department shall submit a complete job description to the Office of Human Resources. This must include the **minimum degree requirement**; number of years of experience required for the position, if any; number of workers H-1B employee will supervise, if any; proposed salary and dates of employment; and location of proposed employment. It takes approximately 2-4 weeks to process the necessary paperwork for approval of an H-1B alien.
5. **Actual Wage Determination:** The Compensation Area in Human Resources shall complete the **Actual Wage Determination Form** to verify the actual wage for this position. The actual wage is defined by the Department of Labor as the wage paid by the employer to all other individuals with similar experience and qualifications as the H-1B worker for the specific employment in question at the place of employment, e.g., the wage paid to all postdoctoral research associates the first year after completion of their degrees, working in a particular laboratory in the Chemistry Department, where an H-1B worker has been hired.
6. The **Actual Wage Determination Form** must be completed before the **Labor Condition Application** can be filed with the Department of Labor. The Office of Human Resources will keep this sheet with the documents required of employers by the Department of Labor.
7. **Labor Condition Application:** The Office of Human Resources will complete **Form ETA 9035**, Labor Condition Application (LCA), and submit **2 copies** to the Department of Labor for certification of working conditions for the H-1B beneficiary. Information needed to complete the LCA includes:

42 job title, proposed rate of pay, proposed dates of employment (maximum time for initial H-1B
43 application is 3 years), and location of employment. (Processing time: 7-10 days.)
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- 45 8. **Posting Requirements:** A notice of filing the LCA must be posted **simultaneously** in two
46 conspicuous locations on or before the date the LCA is filed with the Department of Labor. The
47 posting locations will be in the hiring department and the Office of Human Resources Employment
48 Office. Human Resources will prepare the notices and distribute one to the department representative
49 for posting for at least 10 days. After the notices have been posted, they must be returned to the
50 Office of Human Resources.
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- 52 9. **Payment of Cost of Return Transportation:** The H-1B regulations require that the employer
53 submit a signed statement that the employer will pay the reasonable cost of return transportation if
54 the alien is dismissed before the end of the period of authorized employment. This statement will be
55 signed by the Vice President of Human Resources.
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- 57 10. **Maintaining Documentation:** Regulations require that documentation filed in support of an H-1B
58 petition must be available for public inspection within 1 (one) working day of the filing of an
59 application. The documents to be maintained include the H-1B petition, the LCA, prevailing wage
60 and actual wage information obtained from the department and TWC, and the posted notices. This
61 documentation must be maintained for 1 (one) year after the period of employment listed on the LCA
62 or, if a complaint has been filed, until the complaint is resolved. Human Resources will maintain the
63 documents and make them available upon request.
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- 65 11. Human Resources will consult with the hiring supervisor regarding the **Job Offer letter**. The **Job**
66 **Offer letter** must state the title, description of duties, beginning and ending dates of employment,
67 and salary. **This may be combined with Step 1 (above).** This letter should include the phrase "**this**
68 **offer is contingent upon obtaining the proper visa status.**"
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- 70 12. The foreign national employee candidate may be asked to provide the following, as needed:
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- 72 A. **Photocopy of highest diploma earned**, and signed statement which states photocopies are exact
73 copies of the original documents. If a diploma is not available, a statement from a registrar or
74 academic department stating that all requirements for degree have been completed. An official
75 transcript may be submitted instead of the diploma. If documents are not in English, a certified
76 English translation must be obtained. Verification of the field of study is also required.
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 - 78 B. **Curriculum vitae or resume**, including a list of publications.
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 - 80 C. **Photocopy** of Form I-94 (arrival/departure record).
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 - 82 D. If changing from F-1 to H-1B, submit a copy of **Form I-20** and a copy of authorization for
83 practical training (**EAD - Employment Authorization Document**).
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 - 85 E. If changing from J-1 to H-1B, submit copies of all Forms IAP-66 and proof of being "not subject"
86 to 2-year foreign residence requirement.
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 - 88 F. Copies of previous H-1B documents, if requesting extension of current H-1B status.
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 - 90 G. **Form I-129:** Petition for Nonimmigrant Worker. This application will be completed by the
91 Office of Human Resources with information furnished by the foreign national. (2 copies must be
92 submitted to INS)
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 - 94 H. **Dependents: Form I-539.** Application to Extend or Change Nonimmigrant Status. This
95 application must be completed for dependents to change or extend status along with the primary
96 applicant, and **photocopies** of dependent's I-94's must also be submitted.
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I. **Appropriate INS application fees.** A separate application to request Consular Notification of petition approval may be submitted with the initial H-1B application for use in applying at a U.S. Embassy or Consulate for an H-1B visa to return to the U.S.

J. **Completion of employee information on Form I-129.** Actual Form I-129 will be completed and signed by the Office of Human Resources.

13. The Office of Human Resources shall notify all parties of the status of the application.

President/CEO:

Date: