

H-1B GENERAL INFORMATION AND PROCEDURES

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UNIVERSITY

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H-1B Information for Hiring Departments

What is an H-1B Visa?

- H-1B temporary worker non-immigrant status is designated for individuals coming **temporarily** to the U.S. to perform services in a specialty occupation. *The position must be a specialty occupation as defined as “an occupation that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific specialty as a minimum for entry into the occupation in the United States.” INA214(i); 8USC 1184(i).*
- The H-1B candidate must demonstrate that he/she is qualified for the position and must possess the knowledge and skills needed for the position. The required degree must be in a specialty field.
- The hiring department must provide documentation to prove that the position is a specialty occupation (requiring a Bachelors degree or higher) and that the international person has those qualifications. The United States Citizenship and Immigration Service (USCIS) will make the final decision on whether or not the individual qualifies for the H-1B classification.

Time Limits and Full/Part time H-1B’s

- An employer may request employment for an individual for up to maximum 3 years. The H-1B can be extended if the individual is eligible. The **maximum** amount of time that an individual can hold H-1B visa status is **6 years**.
- **Exception:** If an individual is at a certain stage in the permanent residency process. This individual may be eligible for an H-1B extension beyond the 6-year maximum. OISS should be contacted to determine if the H-1B applicant is eligible.
- An H-1B visa can be applied for either **Full-time or Part-time** positions. Please Note: Part-time H-1B’s require a person to work a minimum amount of hours per week. The department must pay that minimum amount of hours each week. It is the department’s responsibility to document payment of minimum hours per week, if requested in a Department of Homeland Security (DHS) or Department of Labor (DOL) audit. **Please complete the part-time certification if applying for an H-1B petition for less than full-time.**
- There are no minimum hours for part-time H-1B employment, but USCIS can request information about how the H-1B employee will support themselves.

H-1B extensions and H-1B cap

- An H-1B extension, in most cases, is similar in paperwork requirements as an initial H-1B. An H-1B extension petition will require a new prevailing wage and new labor condition application and new supporting documents. If the initial length of the H-1B was for less than 3 years, there are some exceptions when a new prevailing wage is not required. If you are in doubt, please contact OISS for more information concerning H-1B extensions.
- Universities are not subject to annual H-1B cap.

H-1B Amended petitions

- Please consult with OISS prior to any changes in H-1B employment such as job title, job duties, salary, full or part time, or location. An amended H-1B may be required under certain circumstances when a material change takes place.

Wages and Fees

- Please note that MSU departments must agree to pay H-1B employees the actual wage being paid to all other individuals with similar experience or qualifications for the specific employment in question or the prevailing wage (as determined by the Department of Labor, MDCD) level for the occupation for the specific location of employment, whichever is higher.
- Filing fees for University filed H-1B petitions include \$460.00 plus a \$500.00 anti-fraud fee for all initial H-1B cases. **The department is responsible for paying all filing fees.** MSU H-1B extensions are only required to pay the \$460.00 filing fee. The filing fee for change/extension of status for dependents is \$370.00 regardless of the number of dependents.

Premium Processing

USCIS has an expedited process available for H-1B petitions. If interested in using Premium Processing for the H-1B petition, please note on checklist that premium processing is requested. OISS will have to prepare additional forms. Cost: \$1,225.00 plus normal filing fees.

Time: USCIS guarantees that they will do 1 of 3 things within 15 business days of the receipt of the H-1B petition:

1. Approve the petition.
2. Request more evidence.
 - If USCIS requests more evidence, then they are not limited to the 15 days when they receive the evidence.
3. Deny the petition

Hiring Department --- FYI

- Is there a cap on the number of H-1B's approved each year? Yes, but Universities are exempt from the H-1B cap.
- H-1B rules include a "no benching" rule that requires the employer to continue to pay the wage rate to an employee in non-productive status unless the nonproductive status is due to extended illness, maternity leave, etc.
- H-1Bs invited to lecture, collaborate, conduct research or present at other institutions can receive reimbursement and or allowances for reasonable living and transportation costs only. **They are not authorized to receive honorarium.**
- Current H-1Bs may remain in the US and employed for 240 days, while waiting for a timely filed H-1B extension approval from USCIS. If traveling during this time, contact OISS.
- If an H-1B employee from your department resigns or is terminated please inform OISS. OISS may need to withdraw the underlying Labor Condition Application and H-1B petition.
- If H-1B employee will change departments, positions title, duties, hours (full to part or part to full-time) or salary OISS must be notified. It may be necessary to amend the current H-1B petition. If there are any substantial changes in the position such as new job title, qualification, duties, location, etc.

International already has an H-1B Status with another employer

- The H-1B visa is "**employer specific and position specific.**" Thus, you will have to obtain an H-1B visa for your applicant even though s/he may already have an H-1B visa for another US employer, or another position at MSU. These cases will be considered "new" employment for MSU and will require the \$500.00 anti-fraud fee paid by MSU.
- **Portability Rule:** ONLY, if a person already has an H-1B from another employer and wants to begin working at MSU, the MSU H-1B petition must be filed with USCIS. For the employee to start working at MSU, OISS must receive the USCIS receipt notice. With the USCIS receipt notice, Form I-9 can be completed and the employee can begin work. Please note this is not recommended in all cases.

Dual Intent

- The H-1B visa allows the MSU sponsoring department and the applicant to have "dual intent." "Dual intent", allows a temporary H-1B visa holder the intention of applying for a permanent visa in the future or to be in the permanent residency process and still continue to work and travel in H-1B status. Individuals in the permanent residency process should consult with their attorney or OISS before traveling outside the US to determine if all documents are in order.

Return Transportation Costs

- If your department dismisses the employee before the end of the authorized period of H-1B employment, your department will be **responsible for paying the reasonable costs of return transportation** of the employee to the employee's last place of foreign residence. The exception is when the beneficiary voluntarily terminates employment. No penalty is specified, but when the employer fails to pay the required trip expenses, a complaint from the beneficiary asserting noncompliance may be considered by the USCIS in its adjudication of future petitions by the employer. The USCIS expects the employer to meet this obligation, although it does not directly verify compliance. At MSU, return transportation costs will be the responsibility of the hiring department.

Other Important information

- If your H-1B applicant is **OUTSIDE the US** s/he will need time to apply for an H-1B visa stamp at the US embassy or consulate in order to enter the US.
- If your H-1B applicant is **in the US and has a J-1 visa**, the possibility exists that your prospective employee may not be able to change from a J-1 visa to an H-1B visa without first obtaining a waiver of the 2 year home residency requirement. For information about obtaining a waiver please see the following web site: http://travel.state.gov/visa/temp/types/types_1267.html#12
- (If you are not sure if you are subject, contact OISS.)
- H-1Bs are only eligible to enter the US 10 days prior to start date on the H-1B approval notice.
- Export Control Form needed before H-1B can be submitted to USCIS.

Valid H-1B status is dependent on maintaining employment

- There is **NO** grace period for terminated H-1B employees, although USCIS has generally allowed up to 10 days to change their status to another visa category or have another H-1B application filed; this is at the discretion of the adjudicating officer. The H-1B employee must be in valid immigration status to be eligible for any immigration benefit.

Traveling while H-1B status pending

- For internationals that are changing their status to H-1B, while the H-1B application is pending with USCIS, they should not travel outside of the US. If they leave the country while it is pending, USCIS will consider the change of status application abandoned.

Traveling while in H-1B status

- H-1B employees who travel abroad should carry the original H-1B approval notice. Form I-797 approval notice is retained at OISS. The H-1B should request the original I-797 from OISS. A current letter from the department and a copy of the H-1B packet including Form I-129 and the certified LCA should also be taken on the trip.
- Under the "Automatic extension of validity at ports of entry" provision, an H-1B may reenter the US after a 30 day or less trip to Canada or Mexico without a valid H-1B visa stamp. Have the H-1B employee contact OISS for more information.

Dependents

- Spouses and children of foreign nationals, who hold H-1B visas, are eligible for H-4 visas. H-4, dependents include spouse and unmarried children under age 21. Family members with H-4 visas are not eligible to work in the US. H-4's are eligible to attend school, part time or full-time.
- Dependents that need H-4 visa status will need to complete Form I-539 and submit certain documents. See checklist. Form I-539 can only be submitted for dependents if they are currently in the United States. **NOTE: H-1B employee should never sign the Form I-539.** Only one dependent should sign Form I-539 and any additional dependents should be added to Form I-539 supplement.
- If your dependent is NOT in the United States nothing can be submitted on behalf of your dependents. When the dependent wishes to enter the US he/she will have to take to a US consulate the following items to obtain the H-4 visa stamp: I-797 H-1B approval notice, proof of marriage and/or birth, all required forms, fees, and pictures for the visa issuance (check with the consulate you will be visiting for specific requirements and to schedule an appointment in advance if available).

Application Steps

- The H-1B non-immigrant application is a three-step process involving both the Department of Labor (DOL) and the USCIS. This process is a 3-way partnership between OISS, the hiring department and the applicant/employee. The hiring department/s must work together with the applicant to prepare the required materials. Employers are required to obtain prior clearance from the DOL before an H-1B petition may be filed with the USCIS. Employers are required to file a Labor Condition Application (Form ETA 9035) with the DOL, making certain attestations concerning the prevailing wage, working conditions, possible labor disputes and notice of filing of the position. *These regulations apply to both initial and extension H-1B non-immigrant applications.*
- Department should contact/meet with OISS advisor with any questions about the H-1B process and discuss procedures. If the department is familiar with the H-1B hiring procedures, they should start step one and then send the “H-1B Prevailing Wage Request Form” to OISS to the **attention of: Chris Bargerstock and/or Neringa Tuyilingire**

Step One:

Prevailing Wage

The prevailing wage determination requires employers to ensure that the wage offered is not discriminating against US workers by offering wages that are significantly lower than the actual wage. Prevailing wage determinations can be met in several ways. At MSU, OISS will submit the prevailing wage request the Department of Labor (DOL) **OR** a union contract are the sources used to determine the prevailing wage.

The H-1B regulations state that the employer pays the **higher** of the actual wage or the prevailing wage.

In order to start H-1B process or H-1B extension, please complete and submit the “**H-1B Prevailing Wage Request Form**” (preferably by e-mail). OISS will submit Prevailing Wage to the Department of Labor (DOL) and send you an e-mail notifying you the date the prevailing wage was submitted. It may take 30-60 days to get the prevailing wage determination request.

Once you receive an e-mail from OISS with the results of the prevailing wage determination from DOL submit a copy of Internal Notice and Actual Wage Statement so OISS can file Labor Condition Application (LCA). **Once we receive copies of these two forms, we can process LCA.**

Export Control Form

While prevailing wage is pending, complete Export Control Worksheet (http://www.exportcontrols.msu.edu/pilot_ecorrw.php). Once completed, send Export Control Worksheet to Export & Trade Sanctions, 238 Administration Bldg. Export Control Unit will process the form and forward it to OISS.

Step Two:

Labor Condition Application:

Labor Condition Application (LCA): MSU must attest that the higher of the two wages will be paid to the employee, that the employee is eligible for the same benefits as other similarly employed US workers, that the employee is not being employed because US workers are out on strike or lockout, that the employment of the international will not adversely affect the working conditions of other workers, and that proper notification was given of the university’s intent to hire an H-1B non-immigrant. These attestations require documentation that must be made available for Department of Labor (DOL) and for public inspection. MSU/OISS files the Labor Condition Application with the DOL, it is certified and the LCA is included in the H-1B petition submitted to USCIS.

Actual Wage:

MSU must determine the actual wage rate for the position. The actual wage for the position is the wage or wage range offered by the employer for that job. The actual wage keeps the employers from paying the international less than it pays other workers.

Internal Notice:

Two copies of the Internal Notice should be signed by department chair and posted in two places within the hiring department and should remain posted for **10 business days**. *The notice must be of sufficient size and visibility and shall be posted in 2 or more conspicuous places, which would include, but not limited to, locations in the immediate proximity of wage and hour notices or occupational safety and health notices.* The notices must be posted on or within thirty days before the date the LCA is filed with the DOL and remain posted for the ten-day time period.

Labor Condition Application Procedure:

1. Prepare Internal Notice and Actual Wage statement.
2. Once posted, send copies of Internal Notice and Actual Wage statement to OISS.
3. **OISS will prepare LCA. LCA certification takes 7-10 business days from DOL.**
4. Once the 10 business days are reached than the two-posted original Internal Notice's should be dated and signed and sent to OISS.

Step Three:**Preparation of Packets**

1. Department must obtain and complete items from checklist and submit to OISS.
2. International Employee completes questionnaire and submits copies of documents.
3. OISS will review documents, completes necessary forms and prepares the H-1B packet to be sent to USCIS.
4. OISS will notify the Contact Person by e-mail when the packet is ready to be mailed to USCIS
5. Department will pick up "H-1B Packet" from OISS and will send to USCIS.
6. Department mails original "H-1B Packet" to USCIS: [The department will be responsible for express mailing the petition to the USCIS Service Center using a mail service that tracks the package (eg. Federal Express, UPS).]
7. Department returns the 2 original Internal Notices of filing of the LCA after they have been posted for 10 days.
8. Have employee sign and return "Acknowledgment of Certified LCA" to OISS. The H-1B employee must sign an acknowledgment stating receipt of copy of certified LCA and return this to OISS. This is maintained in the public access file. (This acknowledgement form will be in the H-1B materials that the Department picks up when the H-1B packet is complete).

NOTE: All documents submitted to USCIS must be in English or include a Translation Certification.

United States Citizenship and Immigration Service (USCIS) ADDRESS:

**Department of Homeland Security
United States Citizenship and Immigration Service
California Service Center
24000 Avila Road
2nd Floor, Room 2312
Laguna Niguel, California 92677
Phone: 800-375-5283**

For Premium Processing, please write "Premium processing" on the envelope.