

Compliance Requirements for H-1B Employers

Department of Labor: Attestations made in advance of H-1B filing

All employers filing an H-1B petition on behalf of an international employee must first file a Labor Condition Application (LCA - ETA Form 9035) with the U.S. Department of Labor. The LCA attests that the employee will be paid the "actual wage" for the occupation at the place of employment or the "prevailing wage" level for the occupation in the geographic area of employment, whichever is higher. The LCA also states that employment of the employee will not adversely affect the working conditions of similarly employed workers and that notice of the LCA has been provided to similarly employed workers.

A record of all labor condition applications must be maintained and available for public examination. These files must include: (1) ETA Form 9035; (2) evidence of the "prevailing wage"; (3) a memo indicating the "actual wage" determination; and (4) evidence of posting a notice to similarly employed workers that an LCA has been filed. The Public Inspection files are kept in the International Programs Office at Idaho State University.

Employer's obligations upon H-1B approval

- The employer must pay the wages listed in the LCA even if the employee's work is temporarily interrupted/terminated ("No benching rule"). Department of Homeland Security is aware of the intricacies of nine-month academic contracts and allows the H-1B to run continuously through the summer in these situations.
- The employee is limited to performing the job duties as defined on the H-1B petition. If job duties change significantly to the point that a new LCA would need to be filed, then Idaho State University must file an amended H-1B (e.g. postdoctoral researcher to tenure-track faculty).
- An amended H-1B also needs to be filed before employment changes location or switches from full-time to part-time, or vice versa.
- H-1B sponsorship and LCA terminate if employment terminates prior to H-1B expiration date. This requires withdrawing the LCA online and sending a request to USCIS to withdraw the H-1B petition. Contact the International Programs Office immediately when employment ends.
- Current H-1B regulations require that the employer assume responsibility for the reasonable costs of return transportation of the employee abroad if the employee is dismissed from employment prior to the end of the authorized stay. In the event that Idaho State University terminates its employment relationship with the employee, department funds must be made available for the cost of his/her return transportation abroad, as required by the Immigration Act of 1990. This responsibility does not apply in the following scenarios:
 - I. if the employee is dismissed from service for good cause;
 - II. if the employee violates the terms of his/her visa status; and/or
 - III. if the employee becomes the beneficiary of another employers' H-1B visa petition
- The employer must comply with audit requirements.

Idaho State University

H-1B Hiring Department Compliance Statement

Department Chair checks off each statement and signs at the bottom:

- I have read the "Compliance Requirements for H-1B Employers" and I will comply with all requirements listed therein.
- Effective _____ (mm/dd/yy), I agree to pay a wage of \$_____ until _____ (*end date of H-1B status*) for the position of _____ to be filled by (employer's name),

- If the job duties of the above-named individual change significantly, the job location changes, or the employment ends before the H-1B expiration date, I will contact the International Programs Office immediately so it can take necessary action on the H-1B petition.

- I have completed the Actual Wage Data form.

- I have completed the Form I-129(E) - ISU Supplemental Export Control Questionnaire.

- I agree to pay for the new H-1B filing fees of \$500 for Fraud Prevention Fee and \$460 for the new H-1B application fee or \$460 for renewing a previous Idaho State University H-1B petition. I understand premium processing (if requested) is an additional filing fee of \$2,500.

- This signed form will be returned to the International Programs Office, along with all other requested documents needed for H-1B filing.

Name of the Department Chair

Title

Signature of Department Chair

Date