H-1B Wage Requirements

International Scholars Operations (ISO)

http://ap.washington.edu/iso/

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Agenda

• H-1B Overview
• Prevailing Wage, Prevailing Wage Issues & Tips
• Labor Conditions Application
• Actual Wage, Actual Wage Memo Purpose & Tips
• Required Wage, Required Wage Scenarios
What is an H-1B Nonimmigrant?

- **Temporary Worker in a Specialty Occupation**
- May fill a permanent position
- Requires a Bachelor's degree or higher in the specific specialty
- Requires a full state license if applicable to practice in the occupation
- May seek permanent residence concurrently with H-1B status

Government Relationships Related to H-1B Wage
The H-1B Process

• ISO receives signed Visa Request & Supporting Documents (Prevailing Wage Intake Form)
• ISO files Prevailing Wage Request with DoL
• ISO files Labor Conditions Application with DoL
• ISO files I-129 Petition for Temporary Worker with USCIS
• Receipt notice
• Approval

See your H-1B Process handout for more details!

What is the Prevailing Wage?
Prevailing Wage...

- ISO submits a Prevailing Wage Request with DoL.
- DoL uses the title, duties, and requirements of the position to decide which Occupational Category/Job Level is most appropriate
- Based on the above, DoL pulls from its survey data
- ISO can recommend a category (e.g., Anesthesiologist) but not a level (1, 2, 3, 4), and DoL does not always agree
- Once the determination is issued, the University is bound by it and relies upon it in the event of a DoL audit

Prevailing Wage Issues

So what happens when the Prevailing Wage Determination comes back higher?
The University has to pay the prevailing wage in order to get H-1B status for that employee. There are five options:

1) Pay the higher wage (ouch!)
2) Move the employee into a different title and seek a new prevailing wage
3) Move the employee to a different visa (J-1, TN, E-3)
4) Appeal the determination, if possible
5) End the appointment (ouch!)

Prevailing Wage Intake Tips

Avoid a high prevailing wage when you fill out the Prevailing Wage Intake Form:

- Describe the position in detail, including whether or not it is entry-level, requires training, or supervises others
- Use ISO's suggested post-doc language wherever applicable
- List the absolute minimum experience, training, and education requirements in months, e.g., "minimum 12 months of experience in postdoctoral research"
- If the PI is providing job description and requirements, confirm unusually high experience requirements with them
More Prevailing Wage Tips

- Do not merely describe the foreign national's resume.
- Do not rely on a description provided by the foreign national.
- If duties include research, describe research goals, research to be performed, and techniques and tools to be used.
- For positions requiring teaching, please describe teaching activities.
- If position requires teaching courses, please provide list of course numbers and titles and whether these are undergraduate or graduate courses.

What is the Labor Conditions Application?

- The University files a Labor Conditions Application ("LCA") with the Department of Labor for all H-1Bs.
- The LCA lists all worksites and other relevant conditions of employment, including wage and title.
- Once the LCA is certified, the University is bound by it and must abide by the information listed on it.

Labor Conditions Application (LCA)

The LCA is attestation-based - the University attests to the following...

- That the H-1B employee will make "at least the local prevailing wage or the employer's actual wage, whichever is higher," and receive the same benefits as US workers.
- That employment of the H-1B will not adversely affect working conditions of U.S. workers;
- That no strike, lockout, or work stoppage is taking place; and
- That notice has been given to workers and to the H-1B employee;

The UW must document compliance with these attestations in the event of an audit by the DoL.
What is the Actual Wage?

The “actual wage” is

- The wage offered to the H-1B Beneficiary; OR,
- The wage range offered to similarly-situated employees:
  - Its not an average but often expressed as a range.

Actual Wage Memo

An Actual Wage Memorandum must be included with every H-1B visa request.

The memo is kept in the DoL public access files at ISO, and is used to demonstrate UW compliance with DoL actual wage requirements in the event of an audit.

The memo also allows schools and departments to examine compensation practices holistically.

How Do I Fill Out the Actual Wage Memo?
In determining what employees are “similarly-situated,” Employers may take into consideration “objective standards relating to:”
- Education
- Experience
- Skills
- Knowledge
- Qualifications
- Other “legitimate business factors”

Are there Similarly-Situated Employees?

In determining what employees are “similarly-situated,” Employers may take into consideration “objective standards relating to:”
- Education
- Experience
- Skills
- Knowledge
- Qualifications
- Other “legitimate business factors”

Who is “Similarly-situated?”

Is the Job Title the same?
- NO: STOP! Use Box 1
- YES

Same UW Relationship? (e.g. non-UW funding)
- NO: STOP! Use Box 1
- YES

Similar Qualifications and Job Duties? (e.g. long-term, could they do each other’s jobs?)
- No: Use Box 1
- Yes: Use Box 2

Scenario 1
Dr. Parker has a recent PhD in Biochemistry and no significant experience. He works in a lab in your department with three other postdocs on an obscure cross-species genetics project involving spiders. The lab equipment and experiments performed are fairly routine in the field, but this is the only lab of this type in your department. The three other postdocs include the following:
- Postdoc 1: No experience, PhD in Microbiology, UW employee;
- Postdoc 2: 2 years of experience, PhD in Biology, UW employee;
- Postdoc 3: 4 years of experience, PhD in “Spider-otology,” Conducts specialized research based on her unique experience studying a rare spider found only in the Sahara; UW employee with NIH funding.

What is the most appropriate “appointing unit?”

Are there “similarly-situated” employees?
- Who, and why or why not?
No Similarly-Situated Employees: Box 1

Box 1 requires an explanation. Don't just describe the job or the employee, explain why the job/employee is unique.

We suggest, for example, "Dr. W is the only X in Y Department who has experience and duties involving Z."

With Similarly-Situated Employees: Box 2
**Actual Wage Memo Tips - General**

*Figure out a plan of attack ahead of time.*

Who has what information, and how can you streamline the process of getting it from them?

*Keep your data.*

The information in old Actual Wage Memos may help you complete new Actual Wage Memos.

*Don't give more data than you have to.*

Be concise.

**Box 1** = Differences  
**Box 2** = Similarities

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**What is the Required Wage?**

The **required wage** is the **higher** of two figures:

1. The prevailing wage
2. The actual wage

The University must pay the H-1B beneficiary the required wage.
**Scenario 1**

Dr. Parker has a recent PhD in biochemistry and no significant experience. He works in a lab in your department with three other postdocs on an obscure cross-species genetics project involving spiders. The lab equipment and experiments performed are fairly routine in the field, but this is the only lab of this type in your department. The salaries of the other three postdocs are: Postdoc 1: $40,000, Postdoc 2: $45,000, Postdoc 3: $50,000.

What is the actual wage?

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**Scenario 1**

What is the Required Wage?

**What is the required wage:**

- If the Actual Wage is $40,000 - $50,000 and the Prevailing Wage is $38,000?
- If the Actual Wage is $40,000 - $50,000 but the Prevailing Wage is $60,000?

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**Scenario 2**

Professor Xavier is famous for his pioneering work in the field of human genetic mutations and man-machine interfaces. He will be spearheading a new degree program in your department and his experience and expertise are completely unique. Your department wants to offer him a salary of $100,000.

What is the appropriate “appointing unit?”
Are there similarly-situated employees?
What is the actual wage?

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Scenario 2
What is the Required Wage?

What is the required wage:

• If the Actual Wage is $100,000 and the Prevailing Wage is $80,000?
• If the Actual Wage is $100,000 but the Prevailing Wage is 125,000?

In Summary

- **Prevailing Wage:**
  - Start early
  - Focus on the position
  - Use only minimum job requirements

- **Labor Condition Application:**
  - Focused on position
  - Post for 10 days and return verification to ISO

- **Actual Wage:**
  - Focused on employee and similarly-situated employees in appointing unit
  - Box 1: focuses on differences
  - Box 2: focuses on similarities + wage scale
  - Rely on your Dean/Dept Chair who have to sign the Actual Wage Memo

- **Required Wage:**
  - What the UW has to pay the H-1B Beneficiary
  - The higher of the PW and AW figures (if AW is a range, bottom of the range)

- **KEEP IT SIMPLE** and feel free to ask the ISO team!

Thank you!
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