

H-1B BASICS

International Scholars Operations (ISO)

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AGENDA

- What is an H-1B?
- H-1B Process
- Prevailing Wage Determinations
- Labor Condition Applications
- Filing with USCIS
- Changes to H-1B Employment
- Q&A

WHAT IS AN H-1B?

H-1B TEMPORARY WORKER

- Worker coming to U.S. to work in a “specialty occupation”
- Position must require at least a bachelor’s degree in a relevant field
- More compatible with application for permanent residence than J-1, F-1, TN, or E-3
- Filing fees of up to \$3,460

H-1BS ARE HIGHLY REGULATED

- Employer-, site-, and position-specific
- Require wage protections and notice to workers
- Changes must be reported to Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS)

UW SPONSORSHIP OF H-1BS

Full-time appointments in the following titles/ranks:

- Professorial including acting; teaching, research, and clinical tracks
- Lecturers Full-Time Temporary
- If in the U.S. and exhausted another status (usually F-1 OPT or J-1):
 - Postdoctoral Scholars
 - Acting Instructors
- Medical Residents and Fellows (by exception only)

H-1B PROCESS

VISA REQUEST PROCESS (GENERAL)

Pre-Request

- Unit gathers information on the **H Visa Intake Form**
- Submits **H Visa Request Form** online

Visa Request

- OAP reviews **H Visa Request Form** and contacts unit with questions
- OAP sends a PDF of the **approved H Visa Request**

*Review may include gathering documents to confirm visa or appointment eligibility.

*Contact ISO regarding any changes after conditional approval is issued

Post-Request

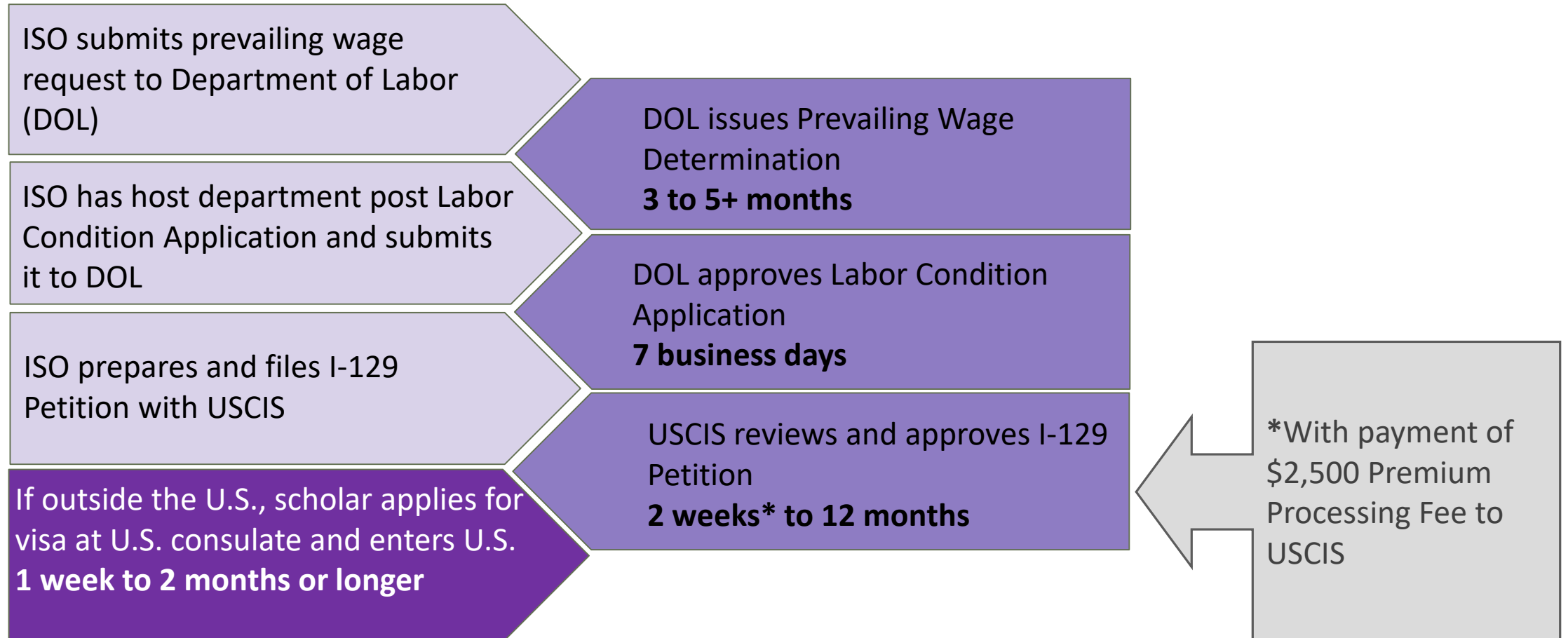
- Unit gathers **supporting documentation**
- Units gets signatures on **approved H Visa Request**
- Unit returns **approved H Visa Request**, with supporting documentation, to ISO for further processing
- ISO initiates next steps with various government agencies

TWO VERSIONS OF THE SAME PROCESS

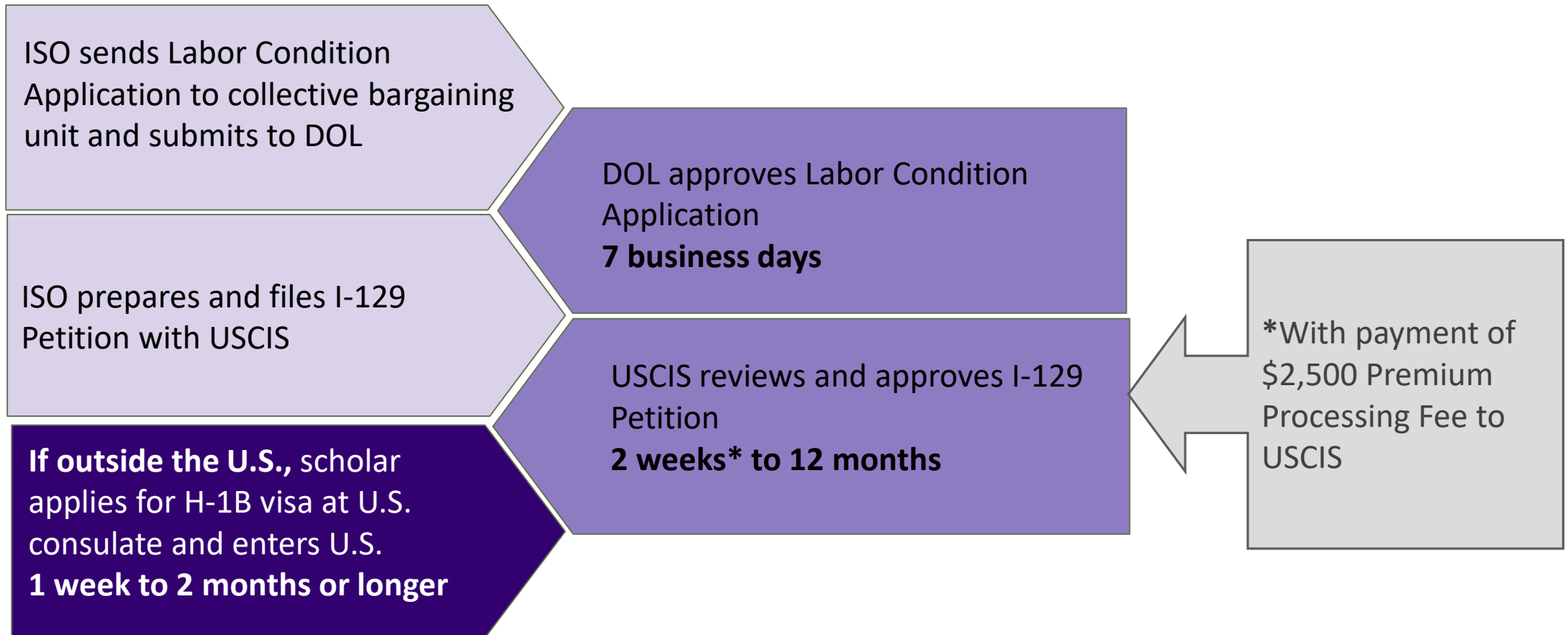
H-1B processing times differ substantially between positions covered by Collective Bargaining Agreements (CBA) and those that are not.

This is because the Department of Labor and the H-1B rules assume that the CBA protects U.S. workers, so less process/guarantees are necessary.

NON-CBA H-1B PROCESS



CBA H-1B PROCESS



PROCESSING TIMES

- Federal agency processing times change regularly
- ISO tries to anticipate times throughout the process
- We currently suggest submitting the visa request at least
 - **12 months** ahead for **new H-1Bs without USCIS premium processing**
 - **7 months** ahead for **amendments, extensions, and changes of employer**
- These suggested times are subject to change

PREVAILING WAGE DETERMINATIONS

WHAT IS THE PREVAILING WAGE?

Average wage paid to similarly employed workers in a specific occupation in the geographic area of intended employment.

- For CBA positions, prevailing wage is set by CBA
- For non-CBA positions, DOL assigns the prevailing wage in a Prevailing Wage Determination.

REQUESTING A PREVAILING WAGE DETERMINATION

ISO requests prevailing wage determination from DOL using [Prevailing Wage Intake Form](#) (and job ad, if competitively recruited).

DOL then chooses an occupational category ("SOC") and wage level (1-4) based on job duties and requirements, and assigns prevailing wage based on local wage data.

FOR EXAMPLE:

An acting instructor position performing research in the Department of Biochemistry, with a requirement for 5 years of postdoctoral experience:

Category: 19-1021 Biochemists and Biophysicists

Wage Level: 2

Wage: \$55,349/year

FOR EXAMPLE:

An acting instructor position performing teaching and research in the Department of Biochemistry, with a requirement for 5 years of postdoctoral experience:

Category: 25-1042 Biological Science Teachers,
Postsecondary

Wage Level: 2

Wage: \$79,990/year

PREVAILING WAGE PROBLEMS

- Sometimes DOL will
 - issue a prevailing wage determination requiring a wage higher than that offered to the H-1B employee
 - take too long to issue a prevailing wage determination, resulting in a gap in employment authorization

We'll talk about how to deal with these problems in our Advanced H-1B training next month!

PREVAILING WAGE TIPS

When you fill out the **Prevailing Wage Intake Form**:

- Describe the job **in detail**, including whether or not it is “**entry-level**” or involves **training or direct supervision**
- List the **absolute minimum** required experience, training, and education for the position – NOT the beneficiary’s qualifications
- **Confirm unusually high experience requirements**
- **Match requirements** to those listed in the ad

ISO will tell you if we think a determination might come back high.

Q & A BREAK

Is the prevailing wage level a minimum?

That combines with the Actual Wage to create our wage minimum.

The required wage is the higher of the prevailing wage and the actual wage.

Has there been any changes to the prevailing wage intake form in the last few years or is it pretty much the same?

Yes, we've revised the prevailing wage intake form to streamline it; the latest versions of all forms are on our [H-1B Required Documents](#) page.

Can we edit H-1B forms for E-3?

We use most of the same forms for H-1B and E-3 visas; [see E-3 Australian Workers](#) for more information.

Is there a list of UW titles that are eligible for the H1B on the website?

A complete list of titles is available at <https://ap.washington.edu/ahr/visas/admin-resources/h1b/>

LABOR CONDITION APPLICATIONS

WHAT IS THE LABOR CONDITION APPLICATION?

The Labor Condition Application (LCA) is meant to protect the rights and working conditions of U.S. workers.

By submitting the LCA, we do the following:

- Lock in dates, salary minimum, and worksites for the H-1B employee.
- Make promises regarding working conditions for the H-1B employee and other workers.

WHAT PROMISES?

On the LCA, the employer must promise that:

- Employer will pay H-1B employee at least the “required wage”
- Employer has given notice to U.S. workers
- No strike, lockout, or work stoppage is taking place
- Employment of H-1B employee will not adversely affect working conditions of U.S. workers

Some of these promises require additional documentation, which ISO keeps in a “public access file” as required by law.

WHAT IS THE REQUIRED WAGE?

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

- Prevailing wage

Average wage paid to similarly employed workers in a specific occupation in the geographic area of intended employment.

- Actual wage

Rate paid by employer to “all individuals with experience and qualifications similar to the H-1B nonimmigrant's experience and qualifications for the specific employment in question at the place of employment.”

HOW IS THE ACTUAL WAGE DETERMINED?

Unit includes wages paid to similarly-situated workers in the appointing unit on the Actual Wage Memorandum in the H-1B packet.

H-1B employee must not be paid less than all other similarly-situated workers.

WHO IS “SIMILARLY-SITUATED”?

- Generally, workers in the same academic title in the same appointing unit
- If your unit has many employees in the same appointment title, you can further differentiate by
 - education
 - experience
 - skills/specialized knowledge
 - job responsibilities and duties
 - publications
 - license/certification
 - other “legitimate business factors”

FOR EXAMPLE:

Which employees would you include on the Actual Wage Memo for Alpha?

Name	Title	Unit	Degree field	Years of experience	Salary
Alpha	Postdoctoral Scholar	Microbiology, Zeta Lab	Biochemistry	2	\$54,000

1	Postdoctoral Scholar	Microbiology, Theta Lab	Microbiology	3	\$55,000
2	Acting Instructor	Microbiology	Pharmacy	4	\$67,000
3	Postdoctoral Scholar	Microbiology, Zeta Lab	Biochemistry	1	\$53,000
4	Acting Assistant Professor	Microbiology	Microbiology	2	\$55,000

THERE ARE MULTIPLE RIGHT ANSWERS

- You can include both postdoctoral scholars (1 and 3) on the Actual Wage Memo.
- You could include only the postdoctoral scholar with a degree in the same area (3).
- Since both postdoctoral scholars are at different experience levels than the H-1B employee, you could choose to include neither.
- But you **can't include** people in other titles (2 and 4) in the same unit.

POSTING NOTICE

- For CBA cases, ISO sends notice directly to the union
- For non-CBA cases, notice can be posted
 - Physically:
 - Posted at **two locations** in each worksite for **ten business days**
 - Electronically:
 - Emailed to faculty listserv, or
 - Posted on intranet (departmental internal website) for **ten business days**
- Notice must be posted before ISO can submit LCA

SUBMITTING THE LCA

DOL has seven business days to approve LCA once submitted.

ISO advisors may reach out after submitting LCA for any remaining documentation.

FILING WITH USCIS

WHAT IS THE PETITION TO USCIS?

USCIS is the agency that grants most immigration benefits in the U.S.

The I-129 petition filed with USCIS is our request to employ someone in H-1B status.

WHAT DO WE FILE WITH USCIS?

- Filing fee check(s)
- USCIS Form I-129 Petition for a Nonimmigrant Worker
- Evidence that position is a “specialty occupation”
- Evidence of employee’s immigration status and history
- Evidence of employee’s qualifications

ISO will provide a copy or scan of everything we file with USCIS.

USCIS PROCESSING TIMES

- Current processing times for all H-1 B petitions:
5.5 to 7.5 months
- Historical processing times:
2 weeks to 10 months

Processing may also take longer if USCIS issues a "Request for Evidence"

PREMIUM PROCESSING

- \$2,500 fee paid to Department of Homeland Security
- Must be paid by unit
- USCIS will take action (approval, request for evidence, or denial) within 15 calendar days of receipt
- Does not expedite action by other agencies (DOL, Department of State) or by ISO
- Sometimes USCIS suspends Premium Processing during peak periods

APPROVAL

- USCIS will mail approval notice with dates of H-1B status to ISO
- ISO will forward approval notice to unit by campus mail unless you request documents be held for pickup
 - Unit can provide FedEx labels to have documents sent directly to employee
- Unit gives the approval notice to the employee
 - They will need the original as proof of status and to reenter the U.S. after international travel

CHANGES TO H-1B EMPLOYMENT

BEYOND INITIAL H VISA REQUESTS

You must submit a new H Visa Request, with supporting documentation, for any of the following:

- **Extend** the person's H-1B status
- **Change** the person's appointment **title or worksite**
- **Move** an H-1B already at UW to your department
- **Transfer** an H-1B already in the U.S. to UW

Submit as early as you can, but at least **seven months** in advance.

ENDING H-1B EMPLOYMENT

- H-1B employers must report any early termination or resignation to DOL and USCIS
- If an H-1B employee resigns or is terminated, contact ISO
- For any early termination, employing unit must offer to pay the “reasonable costs of repatriation” to the employee’s home country

WHAT'S NEXT

- The H-1B Advanced workshop (02/10) will cover:
 - H-1B history and policy affecting UW sponsorship
 - H-4 dependents
 - Time limits on H-1B eligibility
 - Troubleshooting H-1B problems
 - More tips and tricks

If you have an area you'd like addressed, please let us know!

Q & A BREAK

Since postdoctoral scholars are covered by a CBA, do they need an actual wage memo?

Yes. The CBA sets the prevailing wage, but not the actual wage, so we still need an actual wage memo for positions covered by a CBA.

Do you want to know about all H1B terminations or just the early ones?

If you know for certain that someone is leaving employment on the exact end date of their H-1B employment, you don't need to let us know. If you're not certain, it's best to let us know so we can determine whether or not this needs to be reported. If someone gets their green card, please also let us know and send us a copy of the green card so we can end their H-1B status.

If a current H-1B employee is going through a title change AND renewal does one happen before the other or do they happen simultaneously?

It depends on whether the dates of the H-1B and the title line up. [Contact ISO](#) early in the process so that we can provide specific advice.

RESOURCES

- [ISO Landing Page](#)
- [H-1B Landing Page](#)
- [How to Sponsor an H-1B Page](#)
- [OAP Visa Blog Posts](#)
- [H-1B Visa Request Form](#)
- [H-1B Required Documents](#)
- [H-1B Process Handout](#)