

# H-1B BASICS

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International Scholars Operations (ISO)

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UNIVERSITY *of* WASHINGTON

OFFICE OF ACADEMIC PERSONNEL

[acadpers@uw.edu](mailto:acadpers@uw.edu) | <http://ap.washington.edu/>

# AGENDA

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

**WHAT IS AN H-1B?**

# H-1B TEMPORARY WORKER

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- 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
  - Would go up to \$3,780 under new proposed rule on USCIS fees

# H-1BS ARE HIGHLY REGULATED

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- 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

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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)

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## 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



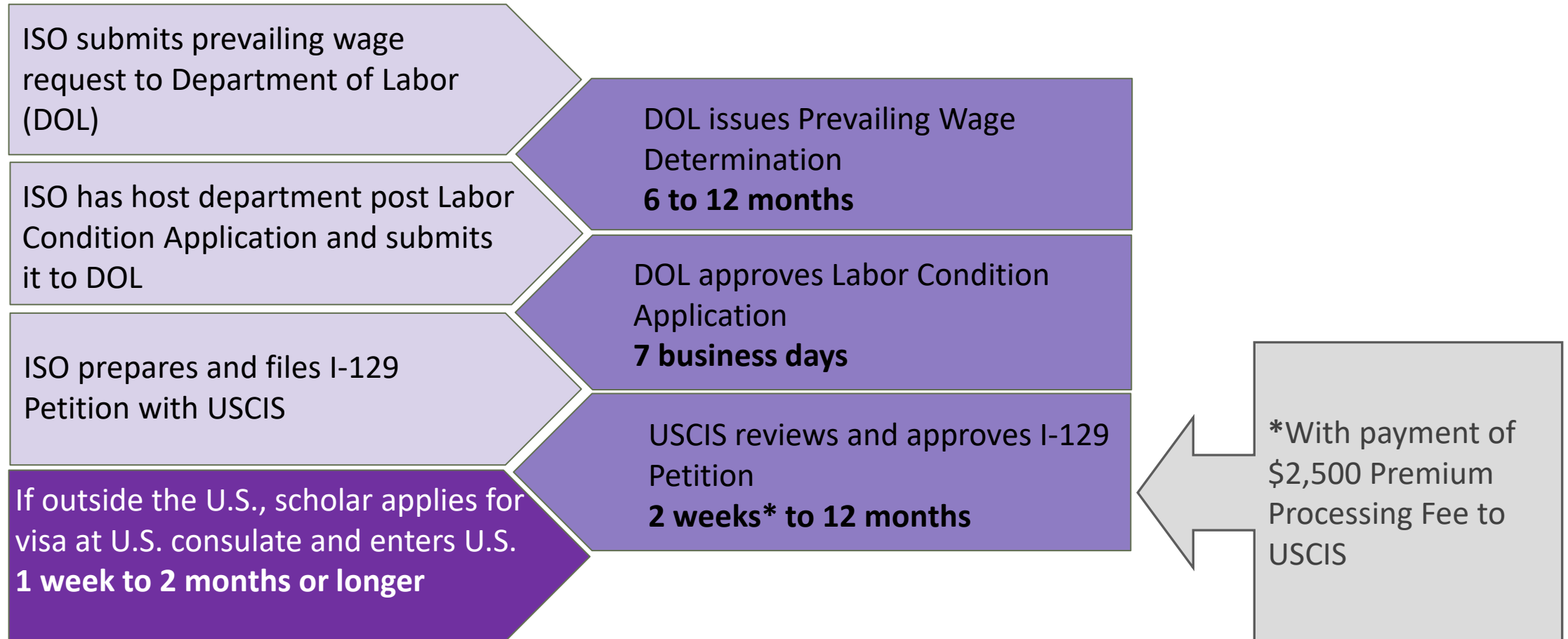
# TWO VERSIONS OF THE SAME PROCESS

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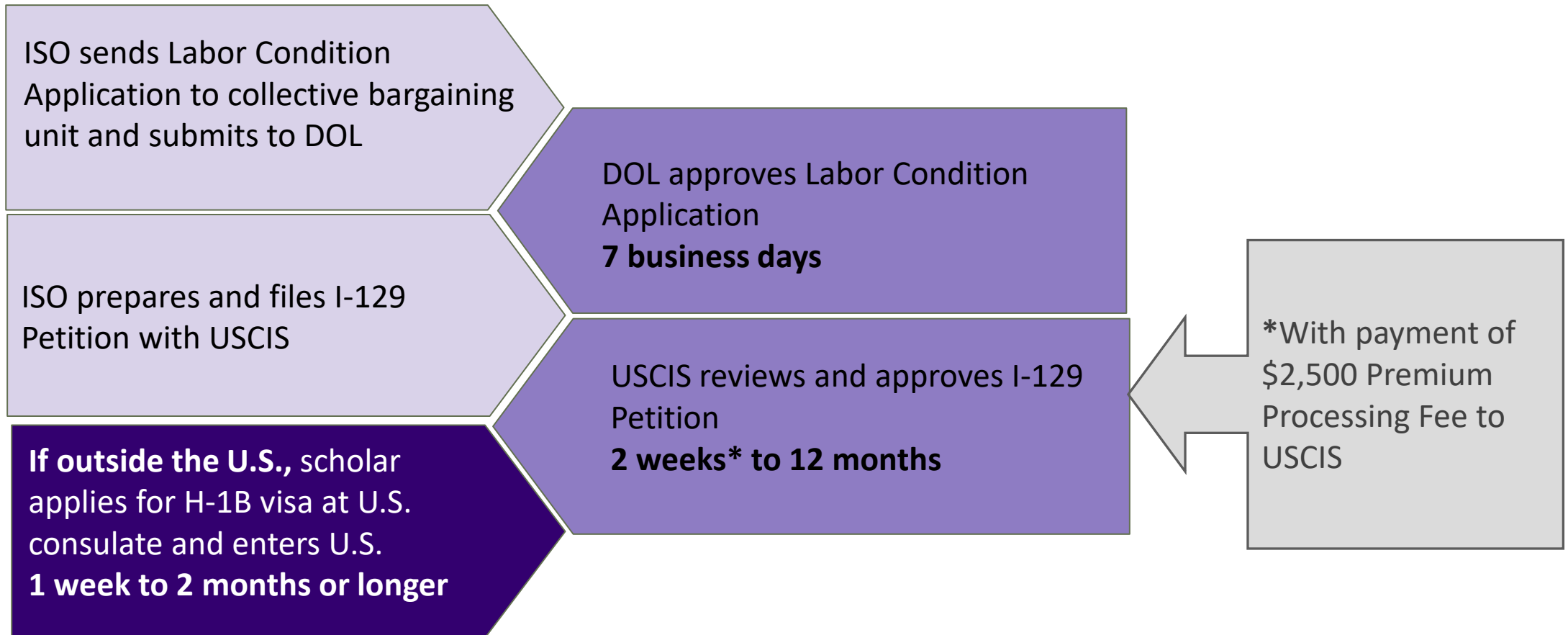
H-1B processing times differ substantially between positions covered by Collective Bargaining Agreements (CBA) and those that are not.

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

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- 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**
  - **9 months** ahead for **amendments, extensions, and changes of employer**
- These suggested times are subject to change

# PREVAILING WAGE DETERMINATIONS

# WHAT IS THE PREVAILING WAGE?

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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

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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:

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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: \$56,430/year



# FOR EXAMPLE:

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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: \$79,690/year

# PREVAILING WAGE PROBLEMS

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- 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

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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

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Q: Can we send documentation to ISO while we are still waiting for checks?

A: Yes, it's fine to do this. If we're working on a long timeline and you send us the checks 9+ months before the start date, it may be that we're not able to use those checks because they expire after 180 days. If you want to wait to request the checks, we'll follow up with you when we're close to filing.

Q: How can I obtain a list of the employees in my department who may need Visa assistance in the next couple years?

A: Workday has a specific report for expiring work authorizations, [R0040](#). This should be a good place to get that information.

# LABOR CONDITION APPLICATIONS

# WHAT IS THE LABOR CONDITION APPLICATION?

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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 notice and working conditions for the H-1B employee and other workers.

# WHAT PROMISES?

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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?

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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?

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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”?

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- 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:

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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	\$67,000

1	Postdoctoral Scholar	Microbiology, Theta Lab	Microbiology	3	\$68,000
2	Acting Instructor	Microbiology	Pharmacy	4	\$57,000
3	Postdoctoral Scholar	Microbiology, Zeta Lab	Biochemistry	1	\$66,000
4	Acting Assistant Professor	Microbiology	Microbiology	2	\$85,000

# THERE ARE MULTIPLE RIGHT ANSWERS

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- 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

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- 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

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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?

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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?

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- 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

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- Current processing times for all H-1 B petitions:  
**2.5-3 months**
- Historical processing times:  
**2 weeks to 10 months**

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

# PREMIUM PROCESSING

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- \$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 (15 *business* days per the USCIS proposed rule)
- Does not expedite action by other agencies (DOL, Department of State) or by ISO
- Sometimes USCIS suspends Premium Processing during peak periods

# APPROVAL

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- 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

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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 **nine months** in advance.

# ENDING H-1B EMPLOYMENT

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- 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

**COMING CHANGES**



# PROPOSED RULE ON USCIS FEES

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- Published in the Federal Register on 01/04/2023
- 60 day public comment period ends on 03/06/2023
- Proposed increase in I-129 filing fees (currently \$460):
  - H-1: \$780
  - E, TN, O: \$1,015
- Premium processing timeframe would change from 15 calendar days to 15 *business* days

# UW FINANCIAL TRANSFORMATION ("FT")

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- [FT](#) will be implemented 07/01/2023
- How ISO bills for visa requests will change
- There may be a blackout period of days or weeks for new visa requests through Lux while we transition
- We'll provide more information when we have it

# WHAT'S NEXT

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- 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 2

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Q: Do promotional changes in title require a new visa request?

A: Yes. Best practice is to map H-1B sponsorship to each appointment, so a new appointment title means a new visa request, with the following exceptions:

- Acting Assistant Professor, pending PhD to Assistant Professor
- Lecturers Full-Time, Competitive Recruitment to the teaching track professorial titles

Q: When someone is near the end of their 6 years, what can we expect? What are the typical paths forward assuming they're going to be here for a while?

A: ISO reviews for that issue as part of the visa request review; you can also send questions about this topic to [acadvisa@uw.edu](mailto:acadvisa@uw.edu). For units, however, often the foreign national will be the best source of this information. Any additional eligibility after the 6 years depends on them having spent a significant period of time outside of the U.S. or being at a certain stage in the green card process, and they can tell you that information just as well as we can.

# Q & A BREAK 2 CONTINUED

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Q: If someone is a permanent faculty employee, at what point should we reach out to ISO about the green card process?

A: ISO tracks this to the best of our ability. See our webpage on [How to Sponsor for Permanent Residence](#). When we receive a visa request for a title eligible for UW Permanent Residence sponsorship, we'll start tracking the relevant deadlines; but if you want to reach out to us at the point that you've made an offer to a foreign national candidate, that's fine too!

# 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](#)