ADVANCED
H-1B TRAINING

INTERNATIONAL SCHOLARS OPERATIONS (ISO)
AGENDA

• H-1B Overview
• H-1B Process at UW
• Prevailing Wage Issues & Tips
• Actual Wage and Required Wage
• Labor Condition Application (LCA)
• Changes of Status, Extensions, Transfers
• Changing/Ending H-1B Status
• Ongoing Duties
WHAT IS AN H-1B?

• Temporary Worker in a Specialty Occupation
• (An occupation which requires theoretical and practical application of a body of highly specialized knowledge)
• Requires a bachelor’s degree or higher in the specific specialty
• Employer-specific and position-specific
• Requires a full state license (if applicable) to practice in the occupation
• May fill a permanent position
• May seek permanent residence concurrently with H-1B status
THE H-1B PROCESS

• ISO receives signed Visa Request & supporting documents
• ISO files Prevailing Wage Request with DoL
• ISO files Labor Condition Application with DoL
• ISO files I-129 Petition for Temporary Worker with USCIS
• Receipt notice
• Adjudication
• Approval

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

From the time ISO receives the full packet with all supporting documents:

• Initial H-1B or Change of Status (Up to 8 months)

• H-1B Transfer, Amendment, or Extension (Up to 5 months)
PREVAILING WAGE

- No Prevailing Wage Determination needed if position is covered by a CBA
- For all other positions, ISO submits a Prevailing Wage Request to 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 issues a wage determination
- Once the determination is issued, the University is bound by it and relies upon it in the event of a DoL audit
What if the Prevailing Wage Determination comes back higher than the offered wage?

ISO will contact you if this occurs. Options will depend on the individual circumstances of the case.
PREVAILING WAGE TIPS

You may be able to avoid a high prevailing wage by following these 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 experience, training, and education requirements for the position – which may be less (but not more) than the beneficiary’s qualifications

• If the PI is providing job description and requirements, confirm unusually high experience requirements with them

• Listen to ISO! If we think a determination might come back high, we’ll tell you
WHAT IS THE ACTUAL WAGE?

The “actual wage” is

• The wage offered to the H-1B Beneficiary; OR,

• The wage range (not the average) offered to similarly-situated employees
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 at least the required wage.
WHAT IS THE LABOR CONDITION APPLICATION (LCA)?

On the LCA, the University promises 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 U.S. workers
- Employment of the H-1B employee will not adversely affect working conditions of U.S. workers
- No strike, lockout, or work stoppage is taking place
- Notice has been given to workers and to the H-1B employee

The UW must document compliance with these promises in the event of an audit by the DoL; this is why we gather the Actual Wage Memo, Verification of Posting, and other documents.
LABOR CONDITION APPLICATION

- The University files a **Labor Condition Application (LCA)** with the DoL 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**.
POSTING LCA NOTICE PROPERLY

After ISO drafts the LCA, we will contact you to have you post notice to U.S. workers. *

• Notice documents must be posted in two locations at each worksite for 10 business (not calendar!) days.

• Once the posting period is complete, complete the Verification of Posting and send it to ISO. This is legally required for our public records. We will wait for you to confirm that posting has occurred at all locations before we file the LCA.

* NOTE: For any employee covered by a Collective Bargaining Unit (e.g., postdoctoral scholars, residents, some fellows), ISO will notify the union and no posting is needed.
LCA POSTING ISSUES

What happens if the posting isn’t performed correctly?

The University agrees to perform posting properly on the LCA. If posting wasn’t done for the requisite period or at two locations at all worksites, the LCA will have to be withdrawn and re-filed.

Don’t let this happen to you!

• Read ISO’s e-mail regarding the LCA. We will always send you all the information you need to perform posting correctly.

• Contact us at acadvisa@uw.edu if you have any questions about where and when to post.
ISSUES DURING AND AFTER FILING

• Changes of status
• Extensions and transfers
• Issues with extensions
CHANGE OF STATUS TO H-1B

Any employee **changing status** from another visa status to H-1B status needs an **approval notice** from USCIS to start working in the H-1B position. This means that the employee:

- **Can stay** in the U.S. while the petition is pending with USCIS*, but **cannot work** unless they still have work authorization under their old status.

- **Cannot travel** internationally while the petition is pending, and **should not travel** until the start date on the approval notice.

Most departments will pay the **USCIS premium processing fee ($1440)** instead of waiting two to eight months for an approval notice from USCIS. Even with premium processing, departments should allow **eight or more months** when starting the visa request process.

*There may be some risk associated with staying in the U.S. during this period.
What happens if the employee travels while the change of status is pending?

- USCIS will approve the H-1B petition but deny the change of status, so
- The employee must leave the U.S. at the expiration of the old status, apply for a new H-1B visa at a U.S. consulate, and reenter in H-1B status.

Don’t let this happen to you! Warn your employees about travel during this period, and have them contact ISO at acadvisa@uw.edu with any questions.
H-1B EXTENSIONS & CHANGES OF EMPLOYER

H-1B extension or change of employer petitions must be filed with USCIS while the employee is in the U.S. in valid H-1B status. ISO cannot file an extension or change of employer petition when:

- The employee is outside the U.S.;
- The employee is in violation of the terms of the H-1B; or
- There is a gap between the end date of the previous H-1B and the start date of the extension/employment with new employer.

UW must file the extension petition with USCIS before the prior H-1B expiration date in order for the employee to keep working after the end of the prior H-1B.

UW must file the change of employer petition before the new employee starts working at UW.

* “Change of employer” is sometimes called a “transfer”
An H-1B petition can request up to **three years of H-1B status** at a time. However, sometimes USCIS grants less time. Reasons may include:

- A **mismatch** between the dates on the employer letter, the LCA, and the I-129 Petition for Nonimmigrant Worker

- The employee may have a **professional license** that expires before the requested end date.

- Simple USCIS error

**Always be sure to check approval notices when they arrive.** ISO will contact USCIS to get approval notices corrected whenever possible, but we may not always catch an erroneous end date.
AFTER THE APPROVAL

• Changes in H-1B status
• Planning ahead (when 6 years isn’t enough)
• Ending H-1B status
• The 10-day departure period
• Ongoing duties
H-1B status is **employer- and job-specific.** In order to get H-1B status, the University reports the following information to the DoL and USCIS:

- Title
- Employing department
- Worksite(s)
- Job duties

Changes require ISO to file an “amended” petition with USCIS. **Amended petitions are like extensions,** and have the same timeline before the employee can start working in the new position.

**Always ask ISO ahead of time if a change will require a new petition!**
BUT 6 YEARS JUST ISN’T ENOUGH!

Normally, H-1B status can be granted for a total of **six years**.

However, there may be ways to get more H-1B time in the following circumstances:

• The employee has spent significant time abroad, and can **recapture** that H-1B time by providing proof of trips (e.g. passport stamps, ticket stubs, online CBP travel history, etc.); or

• The employee has an **approved or pending labor certification application or I-140 immigrant petition** that was filed 365+ days before the end of the 6th year; or

• The employee has an **approved I-140**, is from a **visa backlogged country** (currently only India or China), and is waiting for an immigrant visa to become available.

**Help your H-1B employees plan ahead.** If they travel a lot, **remind them to save their records**. If they tell you they are filing for their green card, **provide a copy of the receipt/approval notices to ISO**.
ENDING H-1B STATUS

• If the H-1B employee resigns (formally or informally) before the end date of the H-1B, let ISO know.
  ◦ We will withdraw the H-1B and the underlying LCA, which protects the University against being sued for back wages or wrongful benching.

• If the H-1B employee is terminated before the end of the H-1B, let ISO know and offer to pay the reasonable costs of return to the H-1B’s home country.
  ◦ This is required by law for all H-1B employers.
  ◦ If you have questions about what are “reasonable costs of return,” contact ISO.
  ◦ We will withdraw the H-1B and the underlying LCA.
ENDING H-1B STATUS

In any event, be sure to let the H-1B employee know that the date of resignation/termination is the last day of their H-1B status with UW. If they do not have another visa or employer lined up, they may need to leave the U.S. on that date.

• If the H-1B employee gets another immigration status, such as a green card, let ISO know.
  ◦ Please send us a copy of the employee’s green card (or other status) as proof.
  ◦ We will withdraw the H-1B and the underlying LCA.
I-94 EXPIRATION DATE

Each time an H-1B employee enters the U.S., they will get a new I-94 issued. Normally, the expiration date of the I-94 will be the same as the end date on the H-1B approval notice (or 10 days later – see next slide).

However, sometimes the I-94 expiration date will be earlier than the expiration date of the approval notice. This may be because:

• The employee’s passport will expire earlier,
• CBP error, or
• Other reason

Make sure the employee downloads the I-94 from the CBP I-94 website, prints, and checks the new I-94 after every entry into the U.S.

The employee may remain in the U.S. only until the I-94 expiration; don’t let your employee fall out of status!
THE 10-DAY DEPARTURE PERIOD

A person entering the U.S. to begin H-1B employment may enter up to 10 days before the start date, and may request a 10-day departure period from the CBP officer who admits them. On some extensions, USCIS will include the 10-day departure period on the I-94 at the bottom of the approval notice even if not requested.

Things to remember about the departure period:

- The CBP officer is not required to grant this request upon entry,
- The departure period does not apply automatically; it applies only if is noted on the I-94, and
- The departure period does not authorize employment.

If an H-1B employee has questions about the departure period, please have the employee contact ISO.
### ONGOING DUTIES OF UW DEPARTMENT

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<tr>
<th>Help your H-1B employee with a Husky card, health insurance, UW NetID . . .</th>
<th>Notify ISO in advance of any changes, including but not limited to:</th>
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<tbody>
<tr>
<td>Monitor work activities for visa compliance</td>
<td>• activity</td>
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<tr>
<td>Follow procedures in a timely manner to extend H-1B status if necessary</td>
<td>• worksite</td>
</tr>
<tr>
<td>Notify ISO if the H-1B employee leaves UW early</td>
<td>• title</td>
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<td></td>
<td>• percentage of FTE</td>
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<td>• leave of absence</td>
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IN SUMMARY

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

Actual Wage
- Focus on employee and similarly-situated employees in appointing unit

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)

Labor Condition Application
- Post for 10 business days and return verification to ISO
QUESTIONS?

For additional information, contact ISO

http://ap.washington.edu/ahr/visas/

acadvisa@uw.edu