

# H-1B BASICS

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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

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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

# 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, and 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** and submits **H Visa Request Form** online

## Visa Request

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

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

## 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.



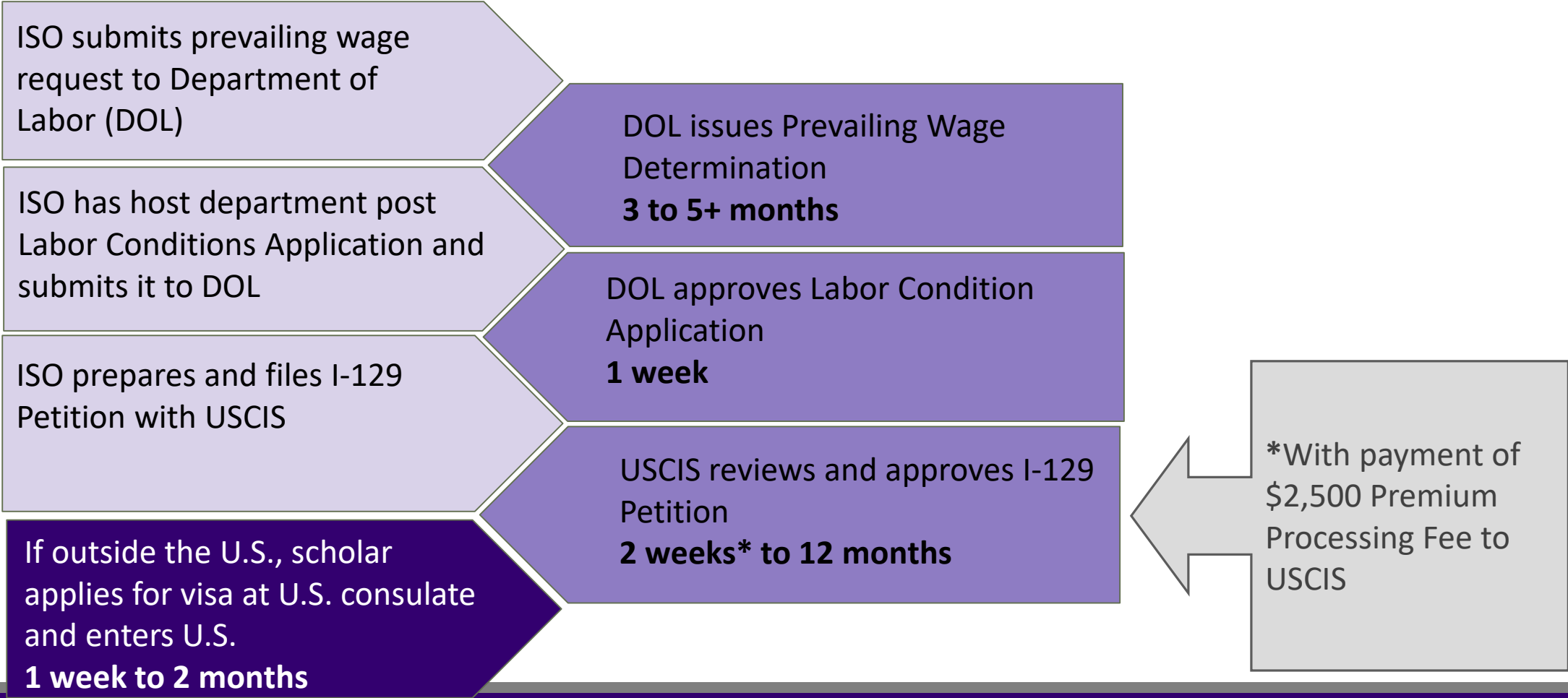
# TWO VERSIONS OF THE SAME PROCESS

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H-1B processing times can differ substantially between positions covered by a Collective Bargaining Agreement (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

ISO sends Labor Condition Application to collective bargaining unit and submits to DOL

DOL approves Labor Condition Application  
**1 week**

ISO prepares and files I-129 Petition with USCIS

USCIS reviews and approves I-129 Petition  
**2 weeks\* to 12 months**

\*With payment of \$2,500 Premium Processing Fee to USCIS

**If outside the U.S.,** scholar applies for H-1B visa at U.S. consulate and enters U.S.  
**1 week to 2 months**

# 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**
  - **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?

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Average wage paid to similarly employed workers in a specific occupation in the 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 wage based on local 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: \$51,334/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: \$76,093/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**
- **Requirements should match** 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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- **Can someone start working before their visa is approved?**

Usually in the circumstances we encounter in ISO, the answer is “it depends.” If the person is outside the U.S. or is in the U.S. in another status that is not work-authorized, they can’t start working until the H-1B is approved. If their current status allows them to work for UW, they can obviously start working. This is a very case-specific question, so always ask the advisor on the visa request.

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# 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.

In submitting the LCA, we lock in dates, salary minimum, and worksites.

We also make promises regarding 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 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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| 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 |

# 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: Two locations in each worksite; ten business days
  - Electronically: Listserv or departmental internal website
- Notice must be posted before ISO can submit LCA

# SUBMITTING THE LCA

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DOL has 7 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  
(if changing or extending status inside the U.S.)
- Evidence of employee’s qualifications

ISO will send you a copy of everything filed with USCIS.



# USCIS PROCESSING TIMES

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- Current processing times for all H-1B petitions:  
**2.5 to 4 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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- Costs \$2,500
- 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

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- USCIS will mail approval notice with dates of H-1B status to ISO
- ISO will forward approval notice to you by campus mail to pass on to employee
  - You can provide a FedEx label to have this sent directly to employee
- Employee will need original approval notice 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 **seven 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

# WHAT'S NEXT

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- The H-1B Advanced workshop (03/02) 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

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## **Q: Has USCIS rejected UW H-1B visa petitions? Why?**

A: USCIS rejections usually only happen if:

- The petition is missing a signature or a filing fee
- A filing fee check has expired
- A form is not the correct edition.
- ISO has a process to check for all of this; we have put a lot of work over the last few years into making sure that our petitions don't get rejected, and as a result it's really rare.

## **Q: Another way to read this question could be, "Has USCIS denied UW H-1B petitions? Why?"**

A: UW has had 1 USCIS denial within the past three years, a denial that was legally erroneous on its face; we pulled in a congressional liaison to get the denial modified in a way that made it less harmful to the employee, then refiled after shoring up the areas where the agency said it was weak, and that time they approved it. Our denial rate since then has been 0%. So it can happen, but it's very rare, in part because we work hard to prevent it.



# Q&A

- [ISO Landing Page](#)
- [H-1B Landing Page](#)
- [OAP Visa Blog Posts](#)
- [H-1B Visa Request Form](#)
- [H-1B Process Handout](#)