

Fact Sheet #62H: What are the rules concerning deductions from an H-1B worker's pay?

This fact sheet provides general information concerning illegal wage deductions under the H-1B program.

An H-1B worker, whether through payroll deduction or otherwise, can never be required to pay the following:

1. A penalty (as defined by state law) for the worker's failure to complete the full employment period (INA § 212(n)(2)(C)(vi)(I));
2. Any part of the statutory training and processing fee imposed by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) (INA § 212(n)(2)(C)(vi)(II));
3. Any part of the statutory \$500 fraud protection and detection fee imposed by USCIS (INA § 214(c)(12)(A)); and/or
4. Any deduction for the employer's business expenses that would reduce an H-1B worker's pay below the required wage rate (20 C.F.R. § 655.731(c)(9)), including:
 - Any expenses, including attorney fees, directly related to the filing of the Labor Condition Application (Form ETA 9035 and/or ETA 9035E) (20 C.F.R. § 655.731(c)(9)(ii));
 - Any expenses, including attorney fees and the premium processing fee (INA § 286(u)) directly related to the filing of the Petition for Nonimmigrant Worker (Form I-129/129W) (20 C.F.R. § 655.731(c)(9)(ii) and (iii)(C));
 - Tools and equipment (20 C.F.R. § 655.731(c)(9)(iii)(C)); and
 - Travel expenses while on employer's business (20 C.F.R. § 655.731(c)(9)(ii) and (iii)(C)).

Deductions, other than those excluded above, may be made, even if they reduce the H-1B worker's pay below the required wage rate, only when the deductions satisfy one of these three categories:

1. Required by law (e.g., income taxes) (20 C.F.R. § 655.731(c)(9)(ii));
2. Reasonable and customary (e.g. union dues, insurance premiums) (20 C.F.R. § 655.7(c)(9)(ii):or

3. Voluntarily authorized by the H-1B worker, under the following standards (20 C.F.R. § 655.731(c)(9)(iii)):

- There is a voluntary, written authorization by the employee;
- For a matter principally for the benefit of the employee, such as reimbursement for travel to the United States or payment for food and lodging that was not incurred while traveling on the employer's business;
- For an amount that does not exceed the fair market value or the actual cost (whichever is lower) of the matter covered; and
- The amount does not exceed the limits for garnishments set by the Consumer Credit Protection Act (see WH Fact Sheet #30).

All requirements listed above can be found in 20 C.F.R. Part 655 Subparts H & I and the Immigration and Nationality Act § 212(n).

Where To Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For additional information, visit our Wage-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).

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