

Fact Sheet #62U: What is the Wage and Hour Division's enforcement authority under the H-1B program?

This fact sheet provides general information concerning the Wage and Hour Division's (WH) enforcement authority under the H-1B program.

The Immigration and Nationality Act (INA) as amended by the Immigration Act of 1990 (IMMACT) and various subsections (e.g., § 212(n) and § 214) of the INA (8 U.S.C. § 1182(n); § 1184)) among other things, created the H-1B classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. The intent of the H-1B provisions is to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the employment of qualified individuals who are not otherwise authorized to work in the United States. The law establishes certain standards in order to protect similarly employed U.S. workers from being adversely affected by the employment of the nonimmigrant workers, as well as to protect the H-1B workers.

The H-1B program responsibilities are divided among various agencies: the Department of Labor's (DOL) Employment Training Administration (ETA), the Department of Homeland Security's U.S. Citizenship and Immigration Service (USCIS), U.S. Department of State (DOS), and the DOL Employment Standards Administration's Wage and Hour Division (WH). Under the law, ETA certifies the conditions that an employer must attest to on the Labor Condition Application (LCA). Once ETA has certified the LCA, the employer must provide it, along with the "Petition for Nonimmigrant Worker," to the USCIS. The petition includes some of the same information as the LCA, and as part of its review, the USCIS reviews information on both documents to determine whether the job meets the requirements of a specialty occupation and whether the petition indicates that the qualifications of the prospective H-1B worker meet the statutory requirements in that specialty. The DOS is responsible for providing foreign workers located outside the United States with a visa to work in the United States with a specific employer for a designated calendar period of time. If the foreign worker is already in the United States, the USCIS provides the nonimmigrant an "Employment Authorization Document," which supplements the nonimmigrant's existing visa. Once an employer obtains the certified LCA and approved petition, WH enforces the attestations within the LCA, which include the material facts and labor condition statements.

Under the H-1B program, when authorized to investigate, WH is responsible for ensuring that workers are receiving the wages promised on the LCA and are working in the occupation and at the location specified. WH can only initiate H-1B-related investigations as a result of one of four factors:

- WH receives a complaint from an aggrieved person or organization;
- WH receives specific credible information from a reliable source (other than a complainant) that the employer has failed to meet certain LCA conditions, has engaged in a pattern or practice of failures to meet such conditions, or has committed a substantial failure to meet such conditions that affects multiple employees;
- The Secretary of Labor has found, on a case-by-case basis, that an employer (within the last five years) has committed a willful failure to meet a condition specified in the LCA or willfully misrepresented a material fact in the LCA. In such cases, a random investigation may be conducted; or

- The Secretary of Labor has reasonable cause to believe that the employer is not in compliance. In such cases, the Secretary may certify that an investigation be conducted.

When violations are found, WH may assess civil money penalties for each violation. Such penalties depend on the type and severity of the violation. For current maximum penalty amounts, see <https://www.dol.gov/whd/immigration/h1b.htm#cmp>. WH may also impose other remedies, including the payment of back wages.

Within 15 days of the date of the notification by the WH Administrator to the employer that a determination of violations has been made, any interested party may request a hearing before an administrative law judge (ALJ) on the WH Administrator's determination. Within 30 days of the decision by an ALJ, an interested party may request a review of the ALJ's decision by the DOL's Administrative Review Board.

Employers found to have committed certain violations may also be precluded from future access to the H-1B program (debarment) and other immigrant programs for a period of at least one year.

The H-1B Nonimmigrant Information Form (WH-4) is used to provide information to WH regarding an employer's compliance with these requirements of the H-1B program for nonimmigrants working in the United States. This WH-4 form is located on the DOL Web site at the following web address http://www.dol.gov/whd/forms/fts_wh4.htm.

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

Where to Obtain Additional Information

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

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.

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