

Fact Sheet #62N: What are the limitations on displacement of U.S. workers by H-1B workers?

This fact sheet provides general information concerning limitations on the displacement of U.S. workers by H-1B workers under the H-1B program.

A U.S. worker is displaced from a job under the H-1B program if the employer lays off the U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought.

Are there special penalties for H-1B employers which displace U.S. workers?

Yes. Any H-1B employer can be assessed a civil money penalty up to \$35,000 (and can be subject to a three-year debarment) for any willful violation of its attestation obligations, if a U.S. worker was displaced during the period the violation occurred.

Which employers are subject to a “no displacement” provision?

The displacement prohibition generally applies to an H-1B-dependent employer (see [WH Fact Sheet #62C](#)), willful violator employer (see [WH Fact Sheet #62S](#)), or an employer receiving funding described in the Employ American Workers Act (EAWA) which hires a new H-1B worker during the period from Feb. 17, 2009 to Feb. 16, 2011, (see [WH Fact Sheet #62Z](#)). The displacement provision applies both to an employer’s own workforce and to the workforce of a secondary/other employer with which the H-1B dependent employer, willful violator employer, or identified EAWA employer, places an H-1B worker.

What is an “essentially equivalent” job?

An “essentially equivalent” job is a job that has the same core responsibilities, requires workers with substantially equivalent qualifications and experience, and is located within the same commuting area.

What is a “lay off”?

A “lay off” means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. A “lay off” does not include a situation in which the U.S. worker is offered alternative employment.

What is an alternative employment offer?

An alternative employment offer is an offer to a U.S. worker, as an alternative to loss of employment, of a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position in which the employee was previously employed regardless of whether or not the employee accepts the offer.

Are there any limitations on the lay-off of U.S. workers due to the placement of H-1B workers at their worksites?

Yes. Prior to placing an H-1B worker with a secondary/other employer, the H-1B employer must inquire whether the secondary/other employer has displaced, or intends to displace a U.S. worker. The displacement protection is limited to the period 90 days before and 90 days after the filing of an H-1B petition, and to 90 days before and 90 days after the placement of an H-1B worker with a secondary/other employer.

Information regarding the additional attestations required of H-1B-dependent employers—non-displacement and recruitment of U.S. workers--can be found at 20 CFR sections 655.738 and 655.739. For information regarding those employers who are recipients of EAWA funding, go to <http://www.financialstability.gov/>

Are there other Federal laws which protect U.S. workers from discrimination?

Yes. Agencies that administer such laws include:

1. The Equal Employment Opportunity Commission, which administers laws that prohibit discrimination in employment based on factors such as age, race, color, religion, sex, national origin, or disability;
2. The Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, which administers several statutes concerning employment discrimination based on national origin, citizenship status, and immigration document abuse; and
3. The Department of Labor's Office of Federal Contract Compliance Programs, which administers several laws prohibiting employment discrimination by certain federal contractors and federally-assisted construction contractors and subcontractors on the basis of factors such as race, color, religion, sex, national origin, disability, and veteran status.

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

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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