



Compliance H-1B, L-1, FDNS and I-9



THE H-1B – SPECIALTY OCCUPATION

- The H-1B is for specialty occupation professionals
- Specialty occupation = the entry level requirement for the position is at least a US bachelor's degree or its equivalent
- The H-1B is valid for 3 years and can be extended for 3 more years up to a total of 6 years in the US
 - Except in certain situations where the employer is pursuing a green card for the H-1B employee
- Annual Cap: 65,000 + 20,000 additional visas for holders of US master's degrees (or higher)



THE H-1B – SPECIALTY OCCUPATION

Remember! You do not have to be able to fly the Millennium Falcon, but the position must require a U.S. bachelor's degree or its equivalent



H-1B WAGE REQUIREMENTS

- Prevailing Wage
 - Average salary paid to similarly situated employees in a geographic region
- Actual Wage
 - The salary paid to US workers, in the same position, at the same worksite, with similar experience and qualifications
- Required Wage
 - The higher of the actual or prevailing wage



THE LABOR CONDITION APPLICATION

- The Labor Condition Application (LCA) is the first step in the H-1B process
- This is where the employer makes promises, such as:
 - Paying the required wage and offering benefits on the same basis as to U.S. workers
 - Providing same working conditions as given to US workers and will not adversely affect working conditions of US workers
 - There is no strike, lockout, or work stoppage in the named occupation at the place of employment
 - Notice will be provided to workers at the place of employment (10 day posting)
 - A copy of the certified LCA will be given to the employee



THE PUBLIC ACCESS FILE

- After filing the LCA employers must maintain a file available for public inspection that includes:
 - Signed certified LCA
 - Documentation of the wage to be paid to the H-1B employee
 - Explanation of “actual wage” system used
 - Copy of the source used to determine the “prevailing wage”
 - Evidence of satisfying the posting requirements
 - Summary of benefits offered to US workers in the same occupational classifications
- Public access files should be maintained for 1 year from the LCA's end date or the date of the employee's termination



COMPLIANCE RECORDS

- Other compliance records, which are not subject to public inspection, must also be maintained in case of a DOL investigation, including:
 - Payroll records for all H-1B and other employees with similar experience and qualifications for the position
 - Evidence that a copy of the LCA was provided to the employee
 - More comprehensive information regarding employee benefits, working conditions, and the company's actual wage system
- Compliance documents should be maintained for 1 year from the LCA's end date
- Payroll records should be maintained for 3 years from the LCA's end date



ONGOING OBLIGATIONS

- Paying the required wage
 - Changes in other employees' salaries and promotions can impact the required wage
 - Employers must pay the required wage even if the employee is in non-productive status, i.e. "benching" workers is not permitted
- Monitoring and updating the "public access file" and compliance documents
- Assuming liability for new employees during corporate restructuring
 - Please contact our office immediately if there are plans to change the corporate structure, so we can work to ensure proper compliance is maintained



H-1B TERMINATIONS

- Employer must execute a “bona fide” termination to cut off liability for H-1B wages under the LCA:
 - Notifying the employee of the termination as required by contract or state law
 - Promptly notifying USCIS of the termination in writing
 - Offering to pay/paying the H-1B employee’s reasonable return transportation costs
- The bona fide termination requirements do not apply to employees who voluntarily resign



DEPARTMENT OF LABOR INVESTIGATIONS

- The Department of Labor (DOL) enforces technical and monetary violations
- Most investigations triggered by a complaint from an aggrieved employee
 - Investigations not limited to complaining employee's file and can extend to all H-1Bs company wide
- Employer will receive an audit letter notifying it once the DOL initiates an investigation
 - Important to contact legal counsel upon receiving an audit letter
- The DOL will then inspect public access and compliance documents for violations



DOL PENALTIES FOR VIOLATIONS

- Back wages for failure to pay the required wage rate (including benefits) for the entire LCA period
- Civil fines of up to \$5,000 per standard violation. Willful violation fines are up to \$35,000 per violation
- Debarment from H-1B and other immigration programs for up to 3 years
- Other administrative remedies



USCIS & FDNS

US Citizenship and Immigration Services (USCIS) created the Fraud Detection and National Security (FDNS) directorate to prevent individuals who pose a threat to national security, public safety, or who seek to defraud the immigration system from receiving immigration benefits



USCIS/FDNS INVESTIGATIONS

- USCIS/FDNS investigations are primarily focused on revoking fraudulently obtained immigration benefits
- New I-129 petitions and I-797 approvals notify employers that USCIS can verify information in the petition

Section 2. Petitioner's Signature and Contact Information *(Read the information on penalties in the instructions before completing this section.)*

I certify, under penalty of perjury, that this petition and the evidence submitted with it is all true and correct to the best of my knowledge. I authorize the release of any information from my records, or from the petitioning organization's records that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit being sought. I recognize the authority of USCIS to conduct audits of this petition using publicly available open source information. I also recognize that supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

I am filing this petition on behalf of an organization and I certify that I am authorized to do so by the organization.

1. Name of Petitioner

Family Name *(last name)* Given Name *(first name)*

2. Signature and Date

Signature of Petitioner Date of Signature
(mm/dd/yyyy) ▶

3. Petitioner's Contact Information

Daytime Telephone Number - Mobile Telephone Number - E-mail Address *(if any)*



ASVVP

- USCIS/FDNS's Administrative Site Visit and Verification Program (ASVVP) oversees random site visits on employers
- Only applies to approved H or L petitions
 - ASVVP plans to expand the program to other classifications in the future
- An estimated 20,000-25,000 site visits are conducted per year



THE SITE VISIT

- Site visits are random and typically unannounced
- Generally last between 15 to 90 minutes
 - Employer can terminate site visit at any time
- Employer should request to see Immigration Officer's identification
- Employer may request legal counsel
 - USCIS/FDNS is not required to permit this request, but generally it will allow either the attorney to be physically or telephonically present during the site visit



THE SITE VISIT (CONT.)

- The Immigration Officer will want to speak with an employer representative and the H or L beneficiary
 - If an answer to an inquiry is not known, additional time can be requested to find the answer
- Immigration Officers may also seek to:
 - Tour the work location
 - Take photographs
 - Request and review documents supporting the petition at issue
 - Interview other personnel to confirm the beneficiary's work location, workspace, hours, salary, and duties
- Employers are encouraged to respond to reasonable requests by the Immigration Officer
 - Failure to provide information can result in the loss of immigration benefits



AFTER THE SITE VISIT

- No further action may be required
- The employer may be asked for additional information that was not available/incomplete during the site visit
- USCIS may issue a Notice of Intent to Revoke (NOIR)
 - USCIS should provide a description of the evidence that formed the basis of the NOIR
 - The employer will have the opportunity to respond and explain its position
- Suspected fraud may be referred to Immigration and Customs Enforcement (ICE) for possible criminal prosecution



BE PREPARED!

- Perform periodic audits to ensure immigration documentation is current and complete
 - Be sure that job duties, work sites, and salary are consistent with the petition filed with USCIS
 - Review details including ownership structure, financial information, number of employees, office locations in the U.S., number of H and L petitions, and recent layoffs
- Develop guidelines and train staff on procedures for responding to site visits