

H-1B Employer Obligations – Information for Hiring Departments

The H-1B is an employment-based petition that contains employer attestations and creates legal responsibilities for the employer. The employer, Portland State University, makes various attestations (regarding the position, wage, etc.) and has obligations towards the Department of Labor, U.S. Citizenship and Immigration Services, and the H-1B employee that it must fulfill. The hiring department's cooperation in fulfilling these obligations is critical to successful H-1B petitions-- if the university is found to be in willful violation of these requirements, the university may be fined and/or may lose the ability to file additional H-1B petitions for a period of time.

Department of Labor Attestations. In filing the Labor Condition Application, the International Faculty Advisor makes attestations based on information provided by the hiring department. The employer must attest that H-1B employee will be paid the "H-1B required wage" (see below); employing this person will not adversely affect the working conditions of U.S. workers similarly employed; there is no strike, lockout, or work stoppage due in this occupation, and that notice of filing the LCA has been provided to the workers in the occupation and the H-1B beneficiary.

Pay H-1B required wage. The H-1B worker must be paid the "H-1B required wage," which is the higher of the two wages: either the "actual wage" (the wage paid to similarly employed workers at PSU) or the "prevailing wage" (the wage set forth in a Collective Bargaining Agreement, or if no CBA exists, the wage paid to similarly employed workers in the metropolitan area).

Consult the International Faculty Advisor prior to any changes in the individual's employment such as change in title, academic degree required for position, number of hours worked, department, location, or position duties (as in some cases, an amended petition will have to be filed). The H-1B is employer-specific and job-specific, and H-1B employment allows employment only in a specific position and location at PSU. Failure to report such changes may put PSU and the individual employee at risk for sanctions and penalties by DHS or DOL.

Provide the H-1B employee's transportation home in the event of an early termination.

If an employee is dismissed before the end of the authorized period of H-1B employment, the department is responsible for paying the reasonable costs of return transportation of the employee to the employee's last place of foreign residence.

Notify the International Faculty Advisor immediately when an H-1B employee will leave his/her employment at PSU before the end of the current H-1B petition for any reason (whether termination or resignation). The IFA is responsible for notifying USCIS and DOL that the employment has ended in order to release the department of salary/payment obligations.

Pay business expenses associated with the H-1B petition. Certain costs associated with filing the H-1B petition are considered business expenses. These costs may not be recouped at a later point by charging the H-1B employee. See "Who pays" for more information.

ALWAYS CONSULT WITH THE INTERNATIONAL FACULTY ADVISOR IN THE FOLLOWING CASES:

- Before changes (promotion, change in responsibilities) in an H-1B employee's position occur.
- If an H-1B employee notifies you that he or she will leave PSU before the end of his or her current petition or will begin a new position at PSU.
- If you plan to terminate an H-1B employee before the end date of his or her current petition.