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REQUEST PACKET FOR H-1B  
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H-1 visa is a non-immigrant visa used to permit a foreign national to enter the United States temporarily for employment in a position<sup>1</sup> which requires specialized knowledge normally attained in one's college study toward a bachelor's degree in a specific specialty. The position must *require at least* a bachelor's degree, or equivalent, in a field that is related to the position offered. If the foreign national does not have a bachelor's degree in a related field, the foreign national may establish his/her qualifications through the 3 to 1 formula (3 years of professional experience may be substituted for each year of college-level training).<sup>2</sup>

This packet provides guidance on the H-1B classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. The [Immigration and Nationality Act \(INA\)](#) as amended created the H-1B visa classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. Amendments also created the H-1B1<sup>3</sup> classification for workers of Chile and Singapore in specialty occupations and the E-3<sup>4</sup> classification for workers of Australia in specialty occupations. In this packet, the term H-1B will include H-1B1 and E-3 unless otherwise noted. The H-1B program is intended to help US employers to fill their temporary labor needs in highly specialized fields by granting H-1B visas to qualified foreign nationals to work in the United States for the US employers who petition them. Only employers who are interested in sponsoring foreign nationals to work under H-1B status may petition USCIS in behalf of the foreign nationals. USCIS must approve the employer's H-1B visa petition before the foreign national named in the H-1B visa petition may work for the employer. A foreign national cannot sponsor him/herself for an H-1B visa. Moreover, if a foreign national has any ownership interest in the petitioning employer, the petitioning employer must establish it will maintain an absolute right to control the foreign national's H-1B employment notwithstanding his/her ownership interest.

The law establishes certain standards to protect similarly employed U.S. workers from being adversely affected by the employment of the foreign nationals under H-1B visa status. The law also protects the H-1B workers from unfair labor practice by employers who employ them. The H-1B program responsibilities are administered and enforced among various federal agencies: the Department of Labor's [Office of Foreign Labor Certification \(OFLC\)](#) and [Wage and Hour Division \(WHD\)](#), the Department of Homeland Security's [U.S. Citizenship and Immigration Service \(USCIS\)](#) and the [U.S. Department of State \(DOS\)](#). The federal government has stepped up its immigration enforcement. Employers and foreign nationals involved in the H-1B program must understand their respective obligations to **strictly comply** with the law.

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<sup>1</sup> H-1B sponsorship is possible for part-time positions.

<sup>2</sup> 8 CFR 214.2(h)(4)(iii)(D)

<sup>3</sup> *H-1B1 worker* is a temporary, nonimmigrant of Chile or Singapore in a specialty occupation given status to work for your company. Initial status may be granted for up to one year. Status may be renewed twice, but only in one-year increments. There is an annual cap of 1,400 nationals of Chile and 5,400 nationals of Singapore.

<sup>4</sup> *E-3 worker* is a temporary, nonimmigrant of Australia in a specialty occupation given status to work for your company. Initial status may be granted for up to two years and is renewable. There is an annual cap of 10,500.



## FILING AN I-129 H-1B VISA PETITION WITH USCIS

Before the foreign national whom your company is interested in hiring can work for you, your company must file an H-1B visa petition in behalf of the foreign national with USCIS and obtain its approval.<sup>5</sup> Once the H-1B visa petition is approved, your company must read the I-797 approval notice carefully to see if it provides the foreign national with the employment authorization to begin his/her employment. USCIS may approve H-1B visa petitions without granting employment authorization to the foreign nationals in cases where the foreign nationals are not in the United States or if in the United States, have been found to be out of status.

For the initial petition, your company may request employment authorization for a maximum period of three years.<sup>6</sup> Six months before the expiration of the approved petition, your company may file an extension petition. The law permits a foreign national to work under H-1B status for a maximum period of six years.<sup>7</sup> Note that H-1B employment is **employer specific**, which means that the foreign national is not authorized to work for anyone else except for your company. H-1B employment is also **job and location specific**. Certain changes in the employment situation can affect the approved H-1B petition and the LCA.<sup>8</sup> The law requires the employer to file a petition to amend the approved H-1B petition **BEFORE** a material change occurs in the foreign national's H-1B employment. Material changes may include, but are not limited to, the following: change in job location, significant changes or additions to the duties and responsibilities, reduction in the foreign national's salary and compensation, change of employment status from full-time to part-time, reduction in work hours, termination of the employment, or a labor dispute, etc. **Your company must file an amended petition with USCIS before any material change takes place. If your company fails to file an amended petition before a material change takes place, this would constitute a substantive violation of your company's obligations under H-1B sponsorship and render the H-1B employment illegal. The foreign national may be found to be out of status, and your company may be liable for fines and penalties.**

## STEPS FOR FILING AN H-1B VISA PETITION

Steps to file an H-1B visa petition for a foreign national are as follows:

1. File an ETA9035E labor condition application (LCA) with the DOL in which your company must review the terms and conditions as explained in the LCA and ETA9035CP and attest under penalty of perjury that your company will comply with the obligations therein. The DOL will take approximately seven (7) business days to certify the LCA. Once the LCA is certified, your company can go to Step #2.
2. File an H-1B Visa Petition with USCIS for adjudication. USCIS will review information on the certified LCA and the H-1B visa petition to determine whether the job meets the requirements of a specialty occupation and whether the foreign worker has the necessary qualifications for the position offered. If USCIS approves the visa petition, USCIS will issue a written approval (Form I-797) to your company with the validity period of your approved H-1B visa petition.
3. Your company must read the I-797 approval notice carefully to see if it provides the foreign national with the employment authorization to begin his/her employment. USCIS may approve H-1B visa petitions without granting employment authorization to the foreign nationals in cases where the foreign nationals are not in the United States or if in the United States,

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<sup>5</sup> If the foreign national is currently under H-1B status working for another company, s/he may be eligible to begin H-1B employment with your company once H-1B visa petition is properly filed with USCIS. Please consult an experienced immigration lawyer before employing the foreign national.

<sup>6</sup> Your company should only request the H-1B employment period for your company's actual needs. For instance, if your company only needs the foreign national to work for you for one year, you must not request for three years. Your company will be liable for transportation cost of sending the foreign national to his/her home country if you terminate the employment prior to the authorized period of stay as requested.

<sup>7</sup> Foreign national under H-1B status may be eligible for extension of H-1B status beyond the six year limitation if s/he qualifies for one of the following conditions before the expiration of the six year H-1B limit: 1. Labor certification application for permanent residency (ETA9089) has been filed on behalf of the foreign national and the application has been pending for at least 365 days; and/or 2. I-140 visa petition has been approved for the foreign national but the visa number is not yet available.

<sup>8</sup> *Labor condition application (LCA)*, Form ETA9035E is a legal document that your company must file with the DOL's [ETA](#) when it seeks to employ a foreign national under H-1B visa status.

have been found to be out of status. If the sponsored foreign national is abroad or will apply for an H-1B visa abroad, your company will need to send the original H-1B approval notice to the foreign national who will need to apply for an H-1B visa with US Consulate. Please note that once the H-1B visa petition is approved, the aforementioned federal agencies will begin enforcing the terms and conditions of the H-1B visa petition and the LCA attestations therein, which include the material facts<sup>9</sup> and labor condition statements. USCIS may send an agent to your company and/or the job site(s) to investigate and verify whether the foreign national is employed in the position as stated in the H-1B visa petition.

## STEP 1: FILING THE ETA9035E LABOR CONDITION APPLICATION (LCA)

Filing the LCA requires your company to provide, among other things, to the DOL: material information about the proffered position, wage offer, prevailing wage rate information, job location, and period of employment requested. Your company must also review the terms and conditions of being an H-1B sponsor and certify under the penalty of perjury that the conditions listed below have been, and will continue to be, met for the duration of the H-1B employment.

- (1) **Wages:** The employer shall pay nonimmigrant workers at least the prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. The employer shall offer nonimmigrant workers benefits and eligibility for benefits provided as compensation for services on the same basis as the employer offers to U.S. workers. **The employer shall not make deductions to recoup a business expense(s) of the employer including attorney fees and other costs connected to the performance of H-1B, H-1B1, or E-3 program functions which are required to be performed by the employer.** This includes expenses related to the preparation and filing of this LCA and related visa petition information. 20 CFR 655.731;
- (2) **Working Conditions:** The employer shall provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed. The employer's obligation regarding working conditions shall extend for the duration of the validity period of the certified LCA or the period during which the worker(s) working pursuant to this LCA is employed by the employer, whichever is longer. 20 CFR 655.732;
- (3) **Strike, Lockout, or Work Stoppage:** At the time of filing this LCA, the employer is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area(s) of intended employment. The employer will notify the Department of Labor within 3 days of the occurrence of a strike or lockout in the occupation, and in that event the LCA will not be used to support a petition filing with the U.S. Citizenship and Immigration Services (USCIS) until the DOL Employment and Training Administration (ETA) determines that the strike or lockout has ended. 20 CFR 655.733; and
- (4) **Notice:** Notice of the LCA filing was provided no more than 30 days before the filing of this LCA or will be provided on the day this LCA is filed to the bargaining representative in the occupation and area of intended employment, or if there is no bargaining representative, to workers in the occupation at the place(s) of employment either by electronic or physical posting. This notice must be posted for a total period of 10 days, except that if employees are provided individual direct notice by e-mail, notification need only be given once. A copy of the notice documentation will be maintained in the employer's public access file. A copy of the LCA will be provided to each nonimmigrant worker employed pursuant to the LCA. The employer shall, no later than the date the worker(s) report to work at the place(s) of employment, provide a signed copy of the certified LCA to the worker(s) working pursuant to this LCA. 20 CFR 655.734

**Your company is required to post a notice at the place(s) of employment. If the foreign national will be assigned to work at a third-party site, the notice of LCA filing must be posted at the third party site as well. If the third-party company refuses to allow the above-described posting at its site, your company will not be able to file the LCA, which means your company cannot sponsor the foreign national for H-1B.**

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<sup>9</sup> *Material fact* means a significant item of information on the LCA, such as: the number of H-1B workers sought; the occupational classification for the worker sought; the rate of pay; the address where documents are kept; the three-digit occupational group code; the job title; the part-time status of the employee; the prevailing wage rate and its source; the period of employment; the location where the H-1B worker will work; and the additional labor condition statements.

Before preparing the LCA to be filed, your company will need to create and maintain a public access file (PAF) to document the compliance of the above terms and conditions as we will explain below.

## **PUBLIC ACCESS FILE: SUPPORTING DOCUMENTATION NEEDED FOR LCA FILING**

Evidence of your attestations to the labor conditions must be kept in a public access file (PAF) and made available for public inspection at the worksite or at your company's principal place of business in the U.S. *on or within 30 days before your company files the LCA*. The PAF must be kept for a minimum of one year after the end date of the authorized period of stay or the date of employment termination, whichever occurs earlier. The PAF must contain the following documentation:

- A signed certified LCA and ETA9035CP;
- Memorandum in support of the above conditions;
- Prevailing Wage Determination and Similarly employed employee worksheet;
- Summary of employee benefits;
- Completed internal posting notices;
- Signed Acknowledgement of LCA Receipt by the foreign national.

Although compliance with the LCA is primarily complaint-driven, the DOL may also investigate on its own accord. If the DOL determines that there was a violation, the employer may be required to pay a civil penalty, and the employer may be barred from petitioning or extending petitions for foreign employees for at least one year. Additionally, whether or not the above penalties are imposed, the employer may be required to pay back wages to all foreign nationals in a particular classification. No determination may be made without a full hearing procedure.

## **STEP 2: FILING AN I-129 H-1B VISA PETITION WITH USCIS**

After the LCA is certified, your company will need to file an I-129 H-1B visa petition with USCIS for its adjudication. The H-1B visa petition generally consists of the following: 1. Immigration forms; 2. Cover letter from your company and supporting evidence to address issues as outlined below; and 3. Evidence of the foreign national's qualifications; and 4. Evidence of the foreign national's legal status, if applicable.

### H-1B SPECIALTY OCCUPATION

For H-1B sponsorship, the proffered position offered to the foreign national must qualify as a "specialty occupation" under the immigration regulations, which is defined as follows:

*... an occupation which requires theoretical and practical application of a body of highly specialized knowledge in such fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a **specific specialty**, or its equivalent, as a minimum for entry into the occupation in the United States.*

USCIS does not use a title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the proffered position, combined with the nature of your business operations are some of the factors that USCIS considers. USCIS must examine the employment of the foreign national and determine whether the position qualifies as a specialty occupation. The critical element is whether the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in **a specific specialty** as the minimum for entry into the occupation.

### ISSUE #1: Job Duties and Responsibilities

Your job description must be sufficiently detailed to establish the depth, complexity, level of specialization, or substantive aspects of the duties for which the foreign national will be responsible. For example, if your job calls for "analysis of" or "providing troubleshooting and technical assistance," you will need to provide specific details regarding the foreign national's role in these duties. You will need to elaborate on the **specific tasks, methodologies, and applications of knowledge** required in furtherance of these duties. Terms such as "troubleshooting" "modify" and "testing" would provide little insight into the foreign national's specific role within these tasks and therefore are simply insufficient. The key is to elaborate how and what methodologies, skills, etc. that the foreign national applies to carry out the duties.

Therefore, your job description should include: (1) the actual work that the foreign national will perform; (2) the complexity, uniqueness and/ or specialization of the duties; and (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

You should also break down the job description by percentage of time and at the end of each segment, provide a list of the courses taken by the foreign national and explain how the knowledge acquired in each course is applied in the actual performance of the job duties. [Attachment 1](#) is a template for Sample Job Description of what may be sufficient for USCIS. **Please provide us with a detailed job description for the foreign national based on the template.**

#### ISSUE #2: Job Requirements: Bachelor's or Higher Degree in a Specific Specialty

After reviewing the job description, USCIS will evaluate your company's job requirements for the position to see if it qualifies as a specialty occupation. USCIS has interpreted the regulations very narrowly to mean that if an employer accepts *various fields of study* for the position, then it must not be a specialty occupation if these fields of study are not closely related. There are federal court case decisions, such as *Raj & Co. v. United States Citizenship and Immigration and Services* and *Residential Finance Corp v. USCIS*, that have overturned the USCIS's narrow interpretation as being arbitrary, capricious, and an abuse of discretion. Nonetheless, USCIS is reasserting a legal position that it is not bound to follow the published decision of a United States district court arising even within the same district, citing the Board of Immigration Appeals decision in *Matter of K-S-*, 20 I&N Dec. 715 (1993).

USCIS would only accept various fields of study only if **the specialties are closely related**, e.g., Chemistry and Biochemistry. On the other hand, if a job requires a degree in two disparate fields, such as Philosophy and Engineering, USCIS most likely will deny the H-1B visa petition since Philosophy and Engineering are two separate distinct fields of study that are not closely related.

We came across a case decision by USCIS in denying an H-1B for a "Training and Development Specialist" occupation. USCIS cites the DOL's Occupational Outlook Handbook (OOH) regarding this occupation in which the DOL states that this occupation may be performed by specialists with a variety of educational backgrounds such as a bachelor's degree in "Training and Development, Human Resources, Education or Instructional Design." The DOL further states that others have a degree in business administration or social science such as Organizational Psychology. USCIS contends that since the OOH does not indicate that a baccalaureate degree in **a specific field of study** is the minimum educational requirements for the occupation, this occupation could not qualify for H-1B. The above is an example of the narrow interpretation of USCIS when it comes to the issue of "specialty occupation." USCIS has continued to rely on the OOH as the basis for its narrow interpretation of the law.

Overall, if you accept a range of specialties for the position offered, you will be required to establish that these fields of study are closely related and each specialty correlates to the H-1B position itself.

#### ISSUE #3: Company Standard

USCIS will review subjective evidence to determine if a bachelor's degree in a specific specialty represents the minimum educational requirement for the H-1B position in your company. **Therefore, please provide the following to us, if applicable:**

- Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including copies of:
  - employment or pay records; and
  - degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.

#### ISSUE #4: Industry Standard

Aside from the subjective evidence above, USCIS will request objective evidence to ascertain if a bachelor's degree in a specific specialty represents the minimum educational requirement for the H-1B occupation in the industry. USCIS will review the DOL's OOH to determine whether said occupation qualifies as a specialty occupation in the industry. USCIS has been using the vagueness in the DOL's OOH description in denying H-1B visa petitions. Particularly for cases that do not traditionally fall within Job Zone 4 or

higher (e.g., Legal Assistants and Paralegals, Computer Support Specialists), USCIS could argue that your H-1B position does not qualify as a specialty occupation. You can address this issue by submitting the following:

- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations. Printing the ads out from indeed.com or other career sites may not be sufficient. Copies of the ads should be from a similar organization in the same industry as your company.
- Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field. Copies of letters or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
  - the writer's qualifications as an expert;
  - how the conclusions were reached; and
  - the basis for the conclusions supported by copies or citations of any material used.
- Any article or trade publication that explains the educational requirements for the job in the industry.

#### ISSUE #5: Determining the Appropriate Wage Level for the Job

The main issue for the H-1B petitions is the LCA Wage Level. USCIS has argued that H-1B petitions with the designation of Level I wage rate may not qualify for an H-1B. USCIS focuses on the definition of Level I as stated in the DOL's 2009 Prevailing Wage Guidance in serving as the foundation for its H-1B denials. For the detailed description of each wage level, please review the following definitions carefully.

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered. Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

While the DOL defines each wage level, the 2009 Prevailing Wage Guidance actually requires the employer to go through a mathematical calculation in determining the appropriate wage level for the job.

Nonetheless, USCIS is using the DOL's definition as a way to question the specialty of the occupation. USCIS contends that how would a position qualifies as a specialty occupation showing sufficient complexity (as explained in Step 1 above) and still meets the definition of entry-level under Wage Level I.

If your company selects Wage Level I, then your company must explain why such a specialty occupation can still be an entry-level position, which requires "only a basic understanding of the occupation ... performs routine tasks that require limited, if any, exercise of judgment". **Your company will need to provide the following:**

- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
  - list all divisions in the organization;
  - identify the proffered position in the chart;
  - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
  - indicate who will direct the beneficiary, by name and job title.
- Explain what "basic understanding" of the job means
- Explain how you intend to "closely supervise and monitor" the foreign national's work
- Explain whether the job only involves "exercising limited judgment, if any."

#### ISSUE #6: Foreign National's Qualifications

USCIS will review the foreign national's educational qualifications to determine if s/he has the necessary qualifications for the job. For instance, we have seen USCIS raised issues regarding the applicability of a bachelor's degree in Electrical Engineering, Mechanical Engineering, or other science related field for the occupation of Software Engineer. Likewise, we have seen challenges from USCIS in cases where the foreign national has a master's degree in Business Administration for the position of Market Research Analyst. The immigration regulations will allow an employer to consider the foreign national's additional professional experience in addition to the education based on the formula of 3 to 1, which means 3 years of professional experience may be substituted for each year of college-level training. For instance, if you have a candidate who has a bachelor's degree in Electrical Engineering but has many years of work experience in computer related field, it is possible to ask for a foreign equivalency evaluation based on the combination of the education and professional experience to determine if s/he has the equivalent of a bachelor's degree in Computer Science, Information Systems or a related field. Please pay particular attention to this as part of the H-1B preparation.

#### ISSUE #7: Employer-Employee Relationship. Right to Control (for IT related positions only)

Your company is required to establish by a preponderance of the evidence that a valid employer-employee relationship will exist between your company and the beneficiary (right to control). Evidence of your company's right to control the foreign national's work may include, but is not limited to the following: the ability to hire, fire, pay, and supervise the beneficiary, the sole discretion to control the foreign national's request for vacation time, or how the foreign national performs the tasks, etc. Whether the foreign national will work at your company location or end client site, you must provide/answer the following:

- Specific project assignments;
- Skills required to perform the specialty occupation;
- The source of the instrumentalities and tools required to perform the specialty occupation;
- What is the location of the work;
- The duration of the relationship between you and the foreign national;
- Do you have the right to assign additional work to the foreign national?
- The extent of the foreign national's discretion over when and how long to work;
- How do you pay the foreign national (e.g. weekly, biweekly, monthly)?;
- Does the foreign national have the ability to hire and pay assistants?
- Is the specialty occupation work part of your regular business;
- Are you in business?
- Do you offer any employee benefits to the foreign national?
- The tax treatment of the foreign national (e.g. W2 or 1099)?
- Can you hire or fire the foreign national or set rules and regulations on his/her work;
- To what extent do you supervise the foreign national's work; and/or
- Does the foreign national report to someone higher in your organization?

USCIS will require the following evidence in support of the H-1B petition:

- Copy of relevant portions of valid contracts, statements of work, work orders, service agreements, and letters between you and the authorized officials of the ultimate end-client
- Copy of a specific position description or any other documentation from the end client that describes the skills required to perform the job offered, the tools needed to perform the job, the product to be developed or the service to be provided;
- Sampling of the beneficiary's proposed duties along with project timelines, schedules, deliverables and whether the product will be produced for the marketplace;
- A comprehensive organizational chart, to include all employees, duties, current assignments and related educational requirements; and/or
- Signed copies of your two or three most recently filed Quarterly tax returns to include all required schedules and statements.
- If the beneficiary will be developing a product for the end client, please submit documentation to show the progress on the designated project(s). USCIS requests that you include updated timelines for anticipated or completed project deliverables. Please also indicate the current phase of the end client project. Additionally, USCIS requests that you provide a list of employees your end client has assigned or will assign to the project. Please note that USCIS may contact any clients whom your company, and your end client, claims to have previously had or currently have valid agreements in order to confirm the claimed relationship and verify your ability to offer specialty occupation work as a practicing business entity in the software and information technology industry. Please ensure that if you submit documentation concerning clients with whom you have provided or will provide software development services, the record should contain current contact information, including the name, title, phone number for place of employment, and email address of one or more representatives at each client's location who can corroborate documentation submitted. USCIS reserves the right to confirm all additional corroborative evidence submitted in your response.

Please note that USCIS may come up with additional issues to challenge our understanding of the immigration law. We will do our best to update this packet as more issues develop.

### EXPORT CONTROL

In the I-129 H-1B Visa Petition, your company is required to certify the following:

- Your company has reviewed U.S. export control regulations;
- A license is not required to release technology to the foreign national; or
- If an export license is required, it will not release controlled technology to the foreign national until it has received a license or other U.S. Government authorization to do so.

The export control regulations are highly complicated. To fully protect your company from violating export control regulations, your company must review the export control regulations and seek independent legal assistance to determine if a license is required to release technology or technical data to the foreign national. **Our legal services in this H-1B filing DO NOT include legal work in analyzing your company's export control compliance in this H-1B filing.**

### **STEP 3: AFTER THE H-1B VISA PETITION HAS BEEN APPROVED**

1. Once the H-1B visa petition has been approved for the foreign national (hereinafter as "H-1B Worker"), your company must read the approval notice carefully to see if the approval provides your company with the authorization to begin employing H-1B Worker. If such authorization is granted, your company must ask H-1B Worker to complete Form I-9, before the employment begins. Your company may keep a copy of the H-1B approval notice (Form I-797), along with whatever additional document(s) as required by Form I-9, subject to your company's record retention policy for the purpose of I-9. When your company completes Form I-9, make sure you list the expiration of the I-94, instead of the expiration of the visa, as the validity of the employment authorization.
2. If the H-1B approval notice requires H-1B Worker to first apply for an H-1B visa abroad and be admitted with said H-1B visa before the employment can be authorized, your company cannot employ H-1B Worker until s/he obtains an H-1B visa and is admitted to the U.S. per that visa. Once H-1B

Worker has arrived in the U.S., your company must begin H-1B Worker's employment within 30 days from the date of his/her arrival. Make sure to ask H-1B Worker to complete Form I-9, before employing him/her. Your company must examine and verify H-1B Worker's I-94 and visa stamp page (your company must review instructions for I-9 to see if there is anything else is needed).

3. If H-1B Worker obtains his/her H-1B status through change of status in the U.S., or the existing H-1B visa has or is expired or is no longer valid, AND H-1B Worker wishes to travel abroad, s/he must obtain a new H-1B visa from US consulate before returning to the U.S. Your company must provide the following documents to the H-1B Worker to ensure his/her successful application for an H-1B visa.
  - a. The original H-1B approval notice (Form I-797);
  - b. A complete copy of the visa petition;
  - c. A letter confirming H-1B Worker's employment status with your company; and
  - d. Most recent pay statements, if readily available.

NOTE: The US Consulate may verify the validity of the approved visa petition directly with the Kentucky Consular Center (KCC) of the Department of Homeland Security before H-1B Worker appears for an interview. The US Consulate may also conduct a background check to verify the bona fide of the sponsorship, H-1B Worker's claimed education and/or work experience, if applicable, as well as his/her personal history, etc. Such background check may take time and therefore potentially delays visa issuance.

4. **IMPORTANT!!** Whenever H-1B Worker travels abroad, s/he will need to go through inspection at the time of returning to the U.S. The Department of Homeland Security (DHS) will issue a new I-94 to H-1B Worker to reflect his/her legal status as well as the duration of stay. Under certain circumstances, DHS has known to issue I-94 with a shorter period of validity than the validity of the H-1B visa or approved visa petition (e.g., passport expiring before the expiration of the approved visa petition). It is highly recommended that H-1B Worker visits <https://i94.cbp.dhs.gov/> to print out his/her I-94 so H-1B Worker can verify that the CBP did correctly issue an I-94 with proper H-1B classification and the duration of stay as granted by the H-1B approval notice. If there is a mistake or discrepancy, H-1B Worker must contact the CBP to correct the I-94. In a situation where the DHS refuses to correct the validity date or H-1B Worker fails to catch the discrepancy, then the validity of that I-94 controls, which means that H-1B Worker can only remain and work in the U.S. until the expiration date as authorized on the I-94.
5. Before H-1B Worker travels to and/or leaves the US, s/he should always visit the following US government websites for the latest information on travel restrictions and/or requirements: [www.dhs.gov](http://www.dhs.gov), [www.cbp.gov](http://www.cbp.gov) or [www.state.gov/travel/](http://www.state.gov/travel/)
6. Please keep track of the expiration date of the nonimmigrant/H-1B status, which is shown on the I-94. Your company's authorization to employ H-1B Worker is only valid as long as H-1B Worker's most recent I-94 remains unexpired. H-1B Worker's legal right to work for your company is based on the validity of the most recent I-94, not the visa itself. Your company should develop a policy to ask H-1B Worker to provide the most recent I-94 if and whenever s/he returns to the U.S. after traveling abroad against the information on the I-9 file to make sure the expiration date has not changed. PLEASE KEEP IN MIND THAT IT IS YOUR COMPANY'S SOLE RESPONSIBILITY TO TRACK THIS DATE.
7. **H-1B employment is employer specific, job specific and location specific, etc.** H-1B Worker is only authorized to work under the job title and at the work site(s) mentioned in the H-1B visa petition. Your company is advised NOT to make any changes to the terms and conditions of employment (except a normal increase in salary) without consulting legal counsel. A change of job title, responsibilities, job site, or corporate change may require the filing of an amended petition with USCIS before the material changes can take place.
8. H-1B Worker must be aware of his/her own legal status at all time. The legal right to remain in the U.S. is governed by the validity of I-94. H-1B Worker can only work for your company under the terms and conditions of the approved petition. H-1B Worker must bring to your company's attention if his/her I-94 will expire within seven months so to give Your company sufficient time to prepare for filing an extension petition before I-94 is expired (failure to file extension petition before I-94 expires will render H-1B Worker out of status). H-1B Worker and your company are hereby advised that, once the extension petition has been filed before the expiration of I-94, H-1B Worker may continue working for **an additional 240 days** (provided that the extension petition was timely filed before the expiration of I-94). Such authorization shall be subject to any conditions and limitations noted on the initial autho-

rization. However, if USCIS adjudicates the visa petition before the expiration of this 240 day period and denies the visa petition for extension of stay, the employment authorization under this provision of the law shall automatically terminate upon notification of the denial decision. Moreover, if H-1B extension is not granted by the end of this 240 day period, H-1B Worker must stop working unless the appropriate steps have been taken to obtain additional employment authorization.

9. It is also important to note that if H-1B Worker is laid off, resigns or his/her employment with your company has been terminated, H-1B Worker has a "one-time grace period" of 60 days, or through the expiration of H-1B Worker's I-94, **whichever is shorter**, to look for another job or change status.
10. If H-1B Worker's I-94 has expired and no extension petition or change of status application has been filed, H-1B Worker would begin to accrue unlawful presence. If H-1B Worker accrues 180 days of unlawful presence and then departs from the U.S. after that, H-1B Worker will become inadmissible for 3 years. If H-1B Worker accrues 1 year of unlawful presence and then departs from the U.S., there will be a 10 year bar.
11. Your company must file an extension petition with USCIS to extend H-1B Worker's H-1B visa status no earlier than 6 months before the expiration of H-1B Worker's most recent I-94. **Your company is hereby advised that an H-1B Worker is eligible to extend H-1B status for an aggregate period of stay of up to six years.** At the end of six-year period, H-1B Worker will no longer be eligible to extend his/her H-1B status, unless one of the following conditions exists:
  - a. H-1B Worker has an employment-based permanent residency process (e.g. labor certification application or I-140 visa petition filed) filed and pending for at least 365 days prior to reaching six-year limit. Under this scenario, H-1B Worker is eligible to extend his/her H-1B for one year, per each extension request; or
  - b. H-1B Worker has an I-140 visa petition approved but because of the lack of visa number, H-1B Worker is unable to file his/her I-485 application to adjust status or consular processing. In this case, H-1B Worker is eligible to extend his/her H-1B for three years.

If either of the above scenarios does not apply, the foreign national must leave the U.S. may only be eligible to reapply for H-1B visa only if s/he has stayed abroad for at least 12 months, or for whichever period necessary until his/her green card process has been pending for 365 days, which occurs first. (\*\* certain restrictions apply)

12. Your company guarantees that it has sufficient financial resources to pay H-1B Worker for the duration of employment under the terms of this petition.
13. Your company agrees to pay reasonable transportation cost for sending H-1B Worker to his/her home country in the event that your company terminates the employment before the authorized period of stay as approved by USCIS.
14. Your company agrees to pay H-1B Worker at the rate as required by the approved petition, even if H-1B Worker is being placed in a nonproductive status (i.e., benching). Failure to pay H-1B Worker at the rate that is required by the approved petition will constitute a direct violation of immigration law. Your company may face civil and/or criminal penalties, and complaint/lawsuit from H-1B Worker. H-1B Worker may be considered out of status if s/he does not receive the rate of pay as guaranteed by your company. Additionally, your company could be held liable for salary and other benefits even after the termination of H-1B employment if the H-1B petition is valid and your company fails to revoke or otherwise withdraw the H-1B petition with USCIS. Below are examples of when the wages must be paid.
  - a. *Circumstances where wages must be paid.* If the H-1B Worker is not performing work and is in a nonproductive status due to a decision by Employer (e.g., because of lack of assigned work), lack of a permit or license, or any other reason, Employer is required to pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for hourly employees or the full amount of the weekly salary for salaried employees) at the required wage for the occupation listed on the LCA. If your company's LCA carries a designation of "part-time employment," your company is required to pay the nonproductive employee for at least the number of hours indicated on the I-129 petition filed by your company with the DHS and incorporated by reference on the LCA. If the I-129 indicates a range of hours for part-time employment, your company is required to pay the nonproductive employee for at least the average number of

hours normally worked by H-1B Worker, provided that such average is within the range indicated; in no event shall the employee be paid for fewer than the minimum number of hours indicated for the range of part-time employment. In all cases H-1B Worker must be paid the required wage for all hours performing work within the meaning of the Fair Labor Standards Act, [29 U.S.C. 201 et seq.](#)

- b. *Circumstances where wages need not be paid.* If H-1B Worker experiences a period of nonproductive status due to conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience (e.g., touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (e.g., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), then the employer shall not be obligated to pay the required wage rate during that period, *provided that* such period is not subject to payment under the employer's benefit plan or other statutes such as the Family and Medical Leave Act ([29 U.S.C. 2601 et seq.](#)) or the Americans with Disabilities Act ([42 U.S.C. 12101 et seq.](#)). Payment need not be made if there has been a *bona fide* termination of the employment relationship. INS regulations require the employer to notify the INS that the employment relationship has been terminated so that the petition is canceled ([8 CFR 214.2\(h\)\(11\)](#)), and require the employer to provide the employee with payment for transportation home under certain circumstances ([8 CFR 214.2\(h\)\(4\)\(iii\)\(E\)](#)).
15. Your company attests that it will abide by the conditions of the certified LCA for the entire duration of the H-1B Worker's employment.
16. Your company must immediately notify USCIS if H-1B Worker is no longer employed by your company. It is simply not enough to terminate H-1B Worker internally without notifying USCIS. **Notwithstanding the termination of H-1B's employment, your company is required to continue paying H-1B Worker the proffered wage rate until at such time when notifies USCIS of the termination. Moreover, if the employment is terminated before the authorized period of stay, your company must offer H-1B Worker the reasonable cost of transportation to send H-1B Worker to his/her home country.**
17. Your company understands that it must file an amended petition with USCIS and/or US Department of Labor, if there is a material change to H-1B Worker's employment while under H-1B status. Material changes include, but are not limited to: reduction in the hours worked, significant changes in job duties, reduction in wages (excluding regularly scheduled merit increases), any change in location of the position to an unspecific jobsite (i.e. jobsites that have not been identified in the original petition and certified ETA9035), or transfer of H-1B Worker to and/or from another entity (with a different FEIN number), even if the entity is affiliated or related to your company. Your company must consult with an immigration attorney immediately before any material change in the H-1B Worker's employment arises. Your company must file an amended petition with USCIS to update the material changes before they can take place. **Employment of H-1B Worker, without filing an amended petition, after a material change has occurred will trigger a substantive violation of the terms and conditions of the approved petition, hence constituting illegal employment.**
18. Your company must maintain public access file (PAF) in connection with its H-1B filing for a minimum of one year after the end date of the authorized period of stay or the date of employment termination, whichever occurs earlier. The PAF must contain the following information:
- A copy of the certified ETA9035 and ETA9035CP;
  - Wage memorandum to show:
    - a. Wage rate to be paid to the H-1B worker
    - b. Wage rate to be paid to the H-1B worker
    - c. Full and clear explanation of your actual wage system, if applicable;
    - d. Prevailing wage rate and its source.
    - e. Acknowledgement that in the event you have a corporate change, you must provide a sworn statement by a responsible official of your new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Employer Identification Number (EIN) of your new employing entity, prior to moving H-1B worker(s) from your old company (predecessor) to a new employing entity (successor).
    - f. List of entities included as a "single employer" under the Internal Revenue Code.
  - Prevailing Wage Determination and Similarly employed employee worksheet;

- Summary of employee benefits;
  - Completed internal posting notices;
  - A signed statement by foreign national acknowledging receipt of certified LCA.
19. If corporate merger or acquisition occurs, successor entity may not be required to file an amended petition and/or new ETA9035 (LCA) if the following conditions exist: **(Must consult with an immigration attorney before making any decision with respect to H-1B Worker's employment if your company will undergo merger and/or acquisition).**
- a. The successor entity, **before** the continued employment of H-1B Worker, agrees to assume the predecessor entity's obligations and liabilities under the LCA filed by the predecessor. The successor entity must include a sworn statement by a responsible official attesting that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCAs and the dates of certification, and a description of the actual wage system and FIN of the new employing entity; AND
  - b. There is no material change to the underlying terms and conditions of the H-1B Worker's employment (job location, title, salary, duties and responsibilities, etc. remain the same).
20. "Authorized deduction" -- Employer may only make a deduction from H-1B Worker's wages according to one of the following three sets of criteria.
- a. Deduction which is required by law (e.g., income tax; FICA); or
  - b. (ii) Deduction which is authorized by a collective bargaining agreement, or is reasonable and customary in the occupation and/or area of employment (e.g., union dues; contribution to premium for health insurance policy covering all employees; savings or retirement fund contribution for plan(s) in compliance with the Employee Retirement Income Security Act, [29 U.S.C. 1001](#), et seq.), except that the deduction may not recoup a business expense(s) of the employer (including attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by your company, e.g., preparation and filing of LCA and H-1B petition); the deduction must have been revealed to the worker prior to the commencement of employment and, if the deduction was a condition of employment, had been clearly identified as such; and the deduction must be made against wages of U.S. workers as well as H-1B Workers (where there are U.S. workers); or
  - c. Deduction which meets the following requirements:
    1. Is made in accordance with a voluntary, written authorization by the employee (Note to paragraph (c)(9)(iii)(A): an employee's mere acceptance of a job which carries a deduction as a condition of employment does not constitute voluntary authorization, even if such condition were stated in writing);
    2. Is for a matter principally for the benefit of the employee (Note to paragraph (c)(9)(iii)(B): housing and food allowances would be considered to meet this "benefit of employee" standard, unless the employee is in travel status, or unless the circumstances indicate that the arrangements for the employee's housing or food are principally for the convenience or benefit of your company (e.g., employee living at work-site in "on call" status));
    3. Is not a recoupment of the employer's business expense (e.g., tools and equipment; transportation costs where such transportation is an incident of, and necessary to, the employment; living expenses when the employee is traveling on the employer's business; attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer (e.g., preparation and filing of LCA and H-1B petition)). (For purposes of this section, initial transportation from, and end-of-employment travel, to the worker's home country shall not be considered a business expense.);
    4. Is an amount that does not exceed the fair market value or the actual cost (whichever is lower) of the matter covered (The employer must document the cost and value); and
    5. Is an amount that does not exceed the limits set for garnishment of wages in the Consumer Credit Protection Act, [15 U.S.C. 1673](#), and the regulations of the Secretary pursuant to that Act, 29 CFR part 870, under which garnishment(s) may not exceed 25 percent of an employee's disposable earnings for a workweek.
21. A deduction from or reduction in the payment of the required wage is not authorized (and is therefore prohibited) for the following purposes:
- a. A penalty paid by the H-1B Worker for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer.

- b. The employer is not permitted to require (directly or indirectly) that the nonimmigrant pay a penalty for ceasing employment with the employer prior to an agreed date. Therefore, the employer shall not make any deduction from or reduction in the payment of the required wage to collect such a penalty.
  - c. The employer is permitted to receive bona fide liquidated damages from the H-1B Worker who ceases employment with the employer prior to an agreed date. However, the requirements of Clause 16(c) above must be fully satisfied, if such damages are to be received by the employer via deduction from or reduction in the payment of the required wage.
  - d. The distinction between liquidated damages (which are permissible) and a penalty (which is prohibited) is to be made on the basis of the applicable State law. Please be advised that the corporate user fee can never be included in any liquidated damages received by the employer.
  - e. A rebate of the corporate user fee paid by the employer, if any, under Section 214(c) of the INA. The employer may not receive, and the H-1B Worker may not pay, any part of the corporate user fee, whether directly or indirectly, voluntarily or involuntarily. Thus, no deduction from or reduction in wages for purposes of a rebate of any part of this fee is permitted. Further, if liquidated damages are received by the employer from the H-1B Worker upon the non-immigrant's ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer, such liquidated damages shall not include any part of the corporate user fee. If the filing fee is paid by a third party and the H-1B Worker reimburses all or part of the fee to such third party, the employer shall be considered to be in violation of this prohibition since the employer would in such circumstances have been spared the expense of the fee which the H-1B Worker paid.
  - f. Any unauthorized deduction taken from wages is considered by the Department to be non-payment of that amount of wages, and in the event of an investigation, will result in back wage assessment (plus civil money penalties and/or disqualification from H-1B and other immigration programs, if willful).
  - g. Where the employer depresses the employee's wages below the required wage by imposing on the employee any of the employer's business expenses(s), the Department will consider the amount to be an unauthorized deduction from wages even if the matter is not shown in the employer's payroll records as a deduction.
  - h. Where the employer makes deduction(s) for repayment of loan(s) or wage advance(s) made to the employee, the Department, in the event of an investigation, will require the employer to establish the legitimacy and purpose(s) of the loan(s) or wage advance(s), with reference to the standards set out in paragraph Clause 16(c) above.
22. **Notify USCIS of all address changes.** Any person other than a U.S. citizen is required to file form AR-11 within ten (10) days of any move to notify USCIS of their new address and other contact information. This is also required for a temporary move. The AR-11 form can now be completed on USCIS website at [www.uscis.gov](http://www.uscis.gov).
23. Your company acknowledges and affirms that BRAVLIN PC's legal services in this H-1B filing do not include legal work in analyzing your company's export control compliance. Your company understands that releasing or providing access to the foreign national of controlled technology or technical data covered under the export control regulations, without first obtaining the required export license, is a violation of federal law, which may carry severe civil and criminal penalties. Your company is hereby advised by the firm to seek independent legal assistance on the issue of export control compliance in the H-1B petition filing. Your company will hold the firm harmless, come to the firm's defense, and release the firm from liability should your company is found in violation of the export control regulations in this H-1B filing.

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**IMPORTANT NOTICE REGARDING FDNS SITE VISIT**

Please be advised that USCIS is stepping up efforts to verify the legitimacy of the H-1B sponsorship by sending inspectors to make unannounced on-site inspections at the H-1B employer's business and/or the H-1B employee's worksite. It is very important to follow the instructions below if you are visited by, or receive a phone call from, an inspector.

The inspection may last up to one hour. **Please make sure to take notes during their inspection and interviews and obtain all contact information of the officer. Please be respectful, straightforward and truthful. Keep it simple. Make sure to have a witness present when**

**any individual is speaking with an official.** During the visit, the immigration official will perform an inspection of the following:

1. The office premises will be inspected in order to determine the legitimacy of the facility originally represented in the I-129 petition. Photographs may be taken of the premises.
2. Representatives of the company who signed form I-129 will be interviewed to determine legitimacy of the form originally signed and may be asked detailed questions concerning the business, office locations and number of employees (number of immigrant and non-immigrant workers), and number of work stations, if applicable, as well as detailed information concerning the H-1B beneficiary's title, job duties, job requirements, work location, and salary. (Please note that H-1B specialty occupation class requires at minimum a bachelor's degree or its equivalent. However, if the beneficiary does not have this degree, USCIS accepts three years of progressive work experiences to substitute for one year of college education.) **You may request to call your attorney if necessary.**
3. The H-1B beneficiary may be interviewed to answer questions about his/her salary (equal or more than LCA), job title, job duties, and requirements, employment dates, position location, background information, current address, dependents' information, etc. **Please make sure that the beneficiary is fully aware of the contents of his/her H-1B petition and of job duties and requirements.**
4. Other employees of the company may be interviewed to confirm the same information regarding the H-1B beneficiary's personal and work information. Please make sure that employees and colleagues are aware of the beneficiary's title and duties.
5. In the next page you will find detailed information about the Office of Fraud Detection and National Security (FDNS) and its mission.

## **DETAILED INFORMATION ABOUT FDNS**

### **Administrative Site Visit and Verification Program**

The Fraud Detection and National Security (FDNS) Directorate created and implemented the Administrative Site Visit and Verification Program (ASVVP) in July 2009 as part of its ongoing enhancement to the integrity of the immigration benefit process.

### **What is the ASVVP?**

Under the ASVVP, FDNS conducts unannounced pre- and post-adjudication site inspections to verify information contained in certain visa petitions. USCIS provides petitioners and their representatives of record (if any) an opportunity to review and address the information before denying or revoking an approved petition based on information obtained during a site inspection.

### **How Are Site Inspections Chosen?**

FDNS may perform ASVVP site inspections on randomly-selected applications and petitions, both pre- and post adjudication. ASVVP site inspections are performed without notice. ASVVP site inspectors do not make decisions on immigration benefit petitions or applications.

### **What are the Site Inspector's Tasks?**

ASVVP site inspectors:

- Verify the information submitted with the petition, including supporting documentation submitted by the petitioner, based on a checklist prepared by USCIS
- Verify the existence of a petitioning entity
- Take digital photographs
- Review documents
- Speak with organizational representatives to confirm the beneficiary's work location, employment workspace, hours, salary and duties

Site inspectors will report the results of their site inspections to FDNS, which will review the information to determine whether the petitioner and the beneficiary have met or continue to meet eligibility requirements.

### **What Happens After an ASVVP Inspection?**

An FDNS Officer will review the information gathered, and determine whether there is a need to conduct an administrative inquiry. If so, and following that inquiry, FDNS will provide an Immigration Services Officer (ISO) with a Summary of Findings (SOF). The ISO will use the SOF to determine whether or not the petitioning organization qualifies for the benefit sought. If FDNS cannot verify the information on the petition or finds the information to be inconsistent with the facts recorded during the site visit, the ISO may

request additional evidence from the petitioner or initiate denial or revocation proceedings. When indicators of fraud are identified, the FDNS Officer may conduct additional administrative inquiries or refer the case to ICE for criminal investigation.

#### **Other Anti-Fraud Efforts**

The ASVVP complements other USCIS anti-fraud efforts. In addition to ASVVP visits, FDNS also conducts site visits to support occasional Benefit Fraud and Compliance Assessments and on cases in which immigration fraud is suspected.

### **H-1B RULES AND REGULATIONS**

The enforcement of the H-1B program is done jointly by the DHS and DOL. Both agencies may send agents to visit the job site to make sure the information as provided in the H-1B filing is true and accurate. Below is the information as provided by the DOL in its website called H-1B Advisor: <https://webapps.dol.gov/elaws/h1b.htm>. This website provides guidance on the H-1B classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models.

We have reproduced most of the website content in this document for your easy reference with added information of our own. This information serves as an educational purpose and shall not be construed as legal advice specific to your case. For any case-specific questions, please consult with us before taking any action.

**WARNING: We strongly recommend that you read the entire H-1B Rules and Regulations as contained herein carefully and understand your company's obligations.**

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## NOTIFICATIONS

### *Notice to Workers of Intention to Employ H-1B Worker*

On or within 30 days before you file any labor condition application (LCA), Form ETA 9035E, you must provide a copy of the LCA or the information it contains to the bargaining representative for the workers in this occupation. You must repeat this notice with each new LCA and before you utilize an LCA at a worksite that you did not anticipate and where you did not give notice at the time of filing. You must document and preserve all notices in the PAF.

Where there is no bargaining representative at the other/secondary employer's worksite you must provide notice by one of two methods:

- Physical posting requires two hard copies located in different conspicuous locations at each intended worksite that are accessible to all workers in the sought-after occupation. These postings must remain accessible to all workers for a period of 10 days; or
- Electronic posting may be done for 10 days on any medium accessible to all workers in the intended occupation at the intended place of employment, whether or not they are your employees. Alternatively, you may email the notice directly to each worker in the occupation at the intended place of employment.

**If the end client company refuses you access or permission to fulfill the above-described posting requirements, you may not place your H-1B worker at that end client worksite.**

You must also give the H-1B worker a copy of the approved LCA no later than the date the worker reports to the worksite.

### *Termination Notice*

When you terminate an H-1B worker prior to the expiration of the worker's visa, you must:

- Give the H-1B worker clear notice of the termination of employment;
- Provide notice of any separation to U.S. Citizenship and Immigration Services (USCIS); and
- Document the above actions.

DHS regulations require that you notify USCIS that the employment relationship has been terminated so that the approval of the petition can be revoked (8 C.F.R. 214.2(h)(11)). These regulations also require you to provide the H-1B employee with an offer of transportation home under certain circumstances (8 C.F.R. 214.2(h)(4)(iii)(E)).

## MONETARY ISSUES

### *Initial Obligation to Pay*

Your obligation to pay wages began on the day the H-1B nonimmigrant was available for work or otherwise came under your control, such as reporting for orientation or studying for a licensing exam, or within 30 days of the H-1B worker's entry into the US under H-1B status (or within 60 days from the date USCIS approves the change of status if the H-1B worker is in the US), whichever occurs earlier.

Once the obligation to pay begins, you must pay the required wage rate.

### *Required Wage Rate*

The required wage rate (RWR) is determined on the basis of each LCA, Form ETA 9035E and each H-1B worker. The RWR is the greater of the prevailing wage and the actual wage. It can be hourly or salary depending upon the source you selected and the choice you inserted in section C3 of the LCA. If you selected salary, you must compensate the H-1B worker the full amount of the salary prorated over the annual pay periods. If you selected hourly, you must compensate a full-time H-1B worker for the standard full-time week, usually 40 hours; and you must compensate a part-time H-1B worker no less than the number of hours you specified in both the LCA you obtained and the Form I-129 petition that you filed on behalf of the H-1B nonimmigrant.

### *Payroll Deductions and Satisfying the Required Wage Rate*

- Deductions that are required by law, such as payroll taxes, are certainly permissible.
- Deductions which are reasonable, customary, in compliance with other appropriate laws, disclosed to the worker and made from the wages of U.S. workers as well, such as union dues; health/life insurance and savings/retirement are generally permissible.
- The repayment of loans or advances you provided to the H-1B worker for non-business expenses may be permissible if they are voluntary.
- Whether you may recoup housing costs from an H-1B worker is dependent upon the facts of the arrangement. If you require that an H-1B worker live on site, on your property, in short-term placement, or on business travel, the cost of housing is your business expense and cannot be recouped. However, if an H-1B worker voluntarily lives in housing that you provide, and has agreed in advance to submit to a payroll deduction, it may be a permissible deduction provided it does not exceed your actual costs or fair market value, whichever is less.
- You may never make any deductions for business expenses, such as tools and business travel, from the H-1B worker's required wage rate. An employee's daily home-to-work commuting costs are not your business expense.
- You can never recoup an early cessation penalty from an employee as a payroll deduction or as a separate transaction. And you can never recoup a liquidated damage as a payroll deduction.
- The required wage obligation is satisfied when you pay the RWR to the employee, cash in hand, free and clear, when due, but no less often than monthly. Cash wages paid, for purposes of satisfying the H-1B required wage, consist only of those payments shown in your payroll records as taxable earnings reported to the Internal Revenue Service (IRS), [www.irs.gov](http://www.irs.gov), with appropriate withholding for the employee's tax paid to the IRS and where you have paid both your share and H-1B worker's taxes to the IRS, as well as any other Federal, State, or local government taxes. Off the books payments, per diem and moneys paid via a federal tax [Form 1099](#) do not satisfy the RWR.
- Other than taxes, all reasonable and customary payroll deductions affecting the RWR must be revealed in advance, voluntary, applied equally to U.S. workers, and in compliance with federal, state, and local laws. Such deductions must be an amount that does not exceed the limits set for garnishment of wages in the [Consumer Credit Protection Act](#) (CCPA), under which

garnishment(s) may not exceed 25 percent of an employee's disposable earnings for a workweek.

- If you take any unauthorized deduction from wages, it is considered to be non-payment of that amount of wages. Where you depress the worker's wages below the required wage by imposing on the worker any of your business expenses, the Department will consider the amount to be an unauthorized deduction from wages even if the matter is not shown in the employer's payroll records as a deduction.
- Finally, you may never withhold payment of required wages, including a final pay check.

#### *Benching and Other Nonproductive Periods*

In general, you must pay an H-1B worker from the onset of employment until bona fide termination unless the worker experiences a period of nonproductive status due to conditions unrelated to employment which 1) take the nonimmigrant away from work duties at the worker's voluntary request and convenience, or 2) render the nonimmigrant unable to work.

A salaried worker is entitled to a full salary. A full-time hourly worker is entitled to wages for a full-time schedule of hours, usually 40 hours per week. A part-time hourly worker is entitled to no less than the number of hours specified on the I-129 unless there is a range of hours in which case you must base it on the average hours worked in the preceding periods, provided it is within the range stated on the I-129.

#### *Credits*

Where the Fair Labor Standards Act (FLSA) does not require the payment of overtime, any overtime that you do pay may be credited toward the required wage rate (RWR). On the other hand, if you employ workers who are subject to the protections of the overtime standard, the overtime premiums that you pay, while required by the FLSA, are not a credit toward the RWR.

Housing and food allowances which you provide would be considered for the benefit of the employee, unless the employee is in travel status or short-term placement, or you arrange for the employee's housing or food principally for your own convenience or benefit. However, in order to take credit toward the required wage rate, you must report the value, not to exceed the fair market value or actual cost, whichever is less, as taxable earnings. This credit must have been voluntarily agreed to in writing by your H-1B worker in advance. You may then recover this credit as a payroll deduction provided it meets all of the above requirements, and it does not exceed the limit on garnishments under the Consumer Credit Protection Act (CCPA).

Per diem is generally understood to be payment for the additional expenses that a worker incurs living away from home. When an employer reports an employee's earning at the end of the year on a Form W-2, per diem is listed separately from taxable income, under 'Misc. non-taxable'. It is not a credit toward the required wage rate.

Once paid, bonuses and supplemental payments serve as a credit toward the required wage rate (RWR). If you are committed to a documented, non-discretionary bonus plan, you may be eligible for a projected pro rata credit toward the RWR.

Commissions, recorded and reported as earnings with appropriate taxes and FICA contributions withheld and paid, are a credit toward the required wage rate.

Typically loans or advances are not reported as taxable earnings; hence they cannot be a credit toward the required wage rate (RWR). Some advances, if they are wage advances, may be processed through your payroll and reported as taxable earnings in which case they are a credit toward the RWR. If you intend to recover a non-creditable loan/advance as a payroll deduction, you must obtain prior written authorization from the H-1B worker, you may not recoup any amount in violation of the limit on garnishments under the Consumer Credit Protection Act (CCPA), and you must ensure that this advance was not for an employer business expense. Immigration related services may be your business expenses. There are both employer mandated immigration fees and H-1B worker immigration expenses. Allowable H-1B worker immigration expenses may be permitted as payroll deductions if they were voluntarily agreed to in writing by your H-1B worker in advance, and they do not exceed the limit on garnishments under the Consumer Credit Protection Act (CCPA).

The reimbursement of daily commuting costs (except where an H-1B worker is in short-term placement) may be a credit toward the required wage rate, but only where it is reported as earnings.

Business expenses are never a credit toward the required wage rate.

- You satisfy the required wage obligation when you pay the required wage rate (RWR) to the employee, cash in hand, free and clear, when due, but no less often than monthly, except for permissible deductions. Cash wages paid, for purposes of satisfying the H-1B required wage, consist only of those payments shown in your payroll records as earnings reported to the Internal Revenue Service (IRS), [www.irs.gov](http://www.irs.gov), as taxable earnings, with appropriate withholding for the employee's tax paid to the IRS and where you have paid both your share and the H-1B worker's taxes to the IRS, as well as any other federal, state, or local government taxes. Off-the-books payments, nontaxable earnings and moneys paid via tax Form 1099 do not satisfy the RWR.

#### *Bona Fide Termination/End of Wage Obligation*

When you terminate an H-1B worker or the worker quits prior to the expiration of the work authorization, there are three steps that you must take to establish a bona fide termination and end your obligation to pay wages:

- Provide or obtain clear written notice of termination;
- Notify USCIS of the separation of the employee; and
- Offer the H-1B worker return transportation home if you terminate the worker prior to the end of their period of authorized admission.

You are responsible for the full payment of the required wage rate to the H-1B worker during all periods of productivity and nonproductivity from the onset of the initial wage obligation until the bona fide termination. It is important that you document and retain evidence of each of the above steps.

#### *Immigration Fees*

- The basic fee is an employer's business expense.
- The training and scholarship (petition) fee is not only an employer's business expense, but the law requires that

you may never pass any portion of this fee onto an H-1B worker or third party. This means that an H-1B worker or a third party cannot pay or reimburse you for any part of this fee, whether directly or indirectly, voluntarily or involuntarily. Furthermore, if you seek any damages from a former H-1B worker or third party, you must not include any portion of this fee in the damages, including liquidated damages.

- The fraud prevention and detection fee is an employer's business expense. Similar to the training and scholarship fee, you may never pass any portion of this fee onto an H-1B worker or a third party.
- The premium processing fee is an optional employer business expense where the employer requests that its petition request be processed within 15 days. In rare instances, an employer may be able to demonstrate to the satisfaction of the WHD that the premium processing was requested specifically at the behest of the nonimmigrant for compelling personal reasons.
- Visa fees are the personal obligation of the nonimmigrant and do not constitute employer business expenses.
- Employer business expenses cannot be recouped from an H-1B worker if it results in reducing the H-1B worker's wages below the required wage.

### *Expenses*

It is important to distinguish between your business expenses and the H-1B worker's expenses. Your business expenses can never be passed on to an H-1B worker if in doing so you reduce the worker's wages below the required wage rate (RWR).

- Attorney fees (LCA, I-129, extension); travel costs while on business travel; travel costs while in short-term placement; cost of tools and equipment; cost of license; cost of training and cost of recruitment and overhead are all clearly your business expenses and you cannot recoup them from an H-1B worker if in doing so you reduce the worker's wages below the RWR. Travel costs while in short-term placement include the worker's actual cost of all travel, lodging, meals and incidental or miscellaneous expenses for each workday and non-workday while in this status, including commuting costs.
- Daily home to work commuting costs are the personal expenses of your H-1B worker.
- Transportation for family members and visa costs for family members are not your business expenses, and you may pass on these expenses in full to your H-1B worker.
- Transportation from home country and/or return may contain both business expense and non-business expense costs. Travel to the U.S. is the responsibility of your H-1B worker and if you provide the transportation or transportation advance, you may recoup that expense. Likewise, if the H-1B worker voluntarily quits before the end of the worker's visa or works until the end of your visa period, the worker's transportation home is the worker's own expense. However, if you terminate the H-1B worker prior to the end of the worker's authorized work period, you are required by INA to offer return transportation as a business expense.
- Food and housing may refer to both business and non-business expenses. Housing and food allowances often meet the test of being principally for the benefit of the H-1B worker and not a business expense. However, when the housing is not optional or is for your convenience such as keeping the worker close at hand, when the worker is in travel status for business purposes, or when the worker is on short-term placement, these expenses

are your business expenses and you cannot recoup them if by doing so you reduce the worker's wages below the RWR.

### *Early Cessation Penalty/Liquidated Damage*

You are prohibited from seeking or collecting a penalty, even if agreed upon with the H-1B worker, as a result of the H-1B worker terminating employment before the stipulated end of an employment contract, usually the length of the visa.

Some characteristics of a penalty may include:

- A fixed termination payment regardless of the term of the contract and the length of time during which the contract was in effect before termination;
- An unexplained or unjustified amount of money which is not attributed to any particular cost or loss;
- An amount of money which appears unreasonable in comparison to the worker's earnings; or
- An agreement that is the result of fraud or where it cloaks oppression.

A penalty is distinguishable from liquidated damages which are reasonable approximations or estimates of anticipated or actual damages caused by the H-1B worker's breach of contract. The determination of liquidated damages is to be made on the basis of applicable state law.

Even if an H-1B worker is subject to or owes liquidated damages, you can never take a deduction from the worker's paycheck if in doing so you reduce the worker's wages below the required wage rate (RWR).

### *Fringe Benefits*

You must offer similarly situated H-1B workers fringe benefits on the same basis and in accordance with the same criteria as the benefits you provide to U.S. worker, except you need not offer fringe benefits to an H-1B worker placed in the U.S. for 90 or fewer continuous days if the worker remains on the home country payroll and continues to receive home country benefits without interruption. The home country benefits must be equivalent to those offered by the firm to its similarly employed U.S. workers. You must treat your U.S. workers in the same manner when they are employed outside the U.S. These fringe benefits should be summarized in the public access file.

## EMPLOYMENT SITE

### *Place of Employment*

- When an H-1B worker experiences an extended assignment to a fixed site, that fixed site is considered a worksite. Such worksites often differ from your home office and each site requires that you comply with worksite obligations such as obtaining an approved LCA for the area of intended employment, posting notice of the LCA, determining the [required wage rate](#) and working conditions, and ensuring that there is no labor strike, lockout, or work stoppage. The LCA specific to this worksite determines a worker's [prevailing wage rate](#).
- Off-site developmental activities, peripatetic activities and short visits away from the office required to fulfill the requirements of a particular job function, do not establish a worksite. The worksite from which you send the H-1B workers remains their worksite, and it is this location that determines the worksite obligations such as obtaining an approved LCA for the area of intended employment, posting notice of the LCA, and determining the required wage rate and working conditions. You must also ensure

that the H-1B worker is not a strikebreaker at any location where the worker performs work.

- A short-term placement option may exist when you need to temporarily place an H-1B worker in a place of employment not listed on an existing LCA. Provided there is no strike or lockout at the temporary location, you may use the H-1B worker's home LCA for up to 30 days in a one year period. If the worker maintains ties to the home worksite, the placement may continue but for no more than a total of 60 days. If the H-1B worker exceeds 30 or 60 days in a one year period at a temporary place in an area of employment, you may not place any other H-1B workers in this area of employment. You must pay any H-1B worker on the short-term placement option the worker's actual cost of all travel, lodging, meals, and incidental or miscellaneous expenses for each workday and non-workday while in this status.
- If you already have an approved LCA for the occupation in that geographic area of employment, that LCA will apply. In that case, you do not have a short-term placement. You may at any time file an LCA for the area of employment and comply with its attestations thereby eliminating the short-term placement provisions.

#### *Working Conditions*

You must afford working conditions to your H-1B workers on the same basis and in accordance with the same criteria as you afford to your U.S. workers who are similarly employed at the worksite. You must attest to and ensure that your employment of H-1B workers does not adversely affect the working conditions of similarly employed U.S. worker employees. Working conditions include matters such as hours, shifts, vacation periods, and benefits such as seniority-based preferences for training programs and work schedules. Protected working conditions do not include the right to a job.

#### *Displacement of U.S. Workers*

Applicable to only H-1B dependent employers and/or H-1B willful violators, the Immigration and Nationality Act (INA) provides limited protections against the displacement of U.S. workers by H-1B workers. Displacement under the INA is the layoff of a U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought in the same area of employment.

All employers are subject to the prohibition against displacing one of their own U.S. workers during the period starting 90 days before and ending 90 days after the filing of an H-1B visa petition or extension in conjunction with a willful violation of any of the provisions pertaining to wages/working conditions, strike/lockout, notification, labor condition application specificity, displacement, or recruitment (20 C.F.R. §655.805(a)(2) through (9)) or a willful misrepresentation of a material fact on the labor condition application (20 C.F.R. 655.805(a)(1)).

Employers that violate these provisions are subject to a super penalty up to \$35,000 per violation and a three-year debarment from all immigration programs as well as further administrative remedies.

#### *Strikes and Lockouts*

You must attest that there is no labor dispute strike, lockout or work stoppage in the occupational classification of employees of the employer at the intended place of employment.

If a strike or lockout of workers in the same occupational classification as the H-1B worker subsequently occurs at the place of employment, you must notify Department of Homeland Security (DHS) and may not employ any H-1B worker at that site until cleared by DHS.

#### *Portability*

Portability allows an employed H-1B (not applicable to H-1B1 or E-3) worker to enter into employment with a new H-1B employer. The worker benefits by being able to change jobs without the risk of violating status, and the new H-1B employer benefits by being able to employ an H-1B worker without waiting the normal adjudication period. Questions concerning the process for invoking portability should be directed to USCIS.

The H-1B worker may enter into employment with the new H-1B employer as soon as the new employer files a non-frivolous Petition for a Nonimmigrant Worker (Form I-129/I-129W).

## RECORDKEEPING AND ADMINISTRATION

#### *Public Access*

You must make the following materials available to the public at your principal place of business in the U.S. or at the place of employment, whichever you designated in Section G of the labor condition application (LCA), within one working day of filing an LCA (Form ETA 9035E) with the DOL:

1. The LCA
2. Wage rate to be paid to H-1B worker
3. Full and clear explanation of your actual wage system
4. Prevailing wage rate and its source
5. Documentation that you satisfied the notice requirement
6. Summary of fringe benefits to your U.S. workers and H-1B workers
7. In the event you have a corporate change: a sworn statement by a responsible official of your new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Employment Identification Number (EIN) of the new employing entity.
8. List of entities included as a "single employer" under the Internal Revenue Code.

#### *Required Records*

Some records of interest to the Wage and Hour Division (WHD) are required to be maintained to comply with other laws [e.g., the Fair Labor Standards Act or the Internal Revenue Code (IRC)]. You must maintain the following records and make them available to the WHD upon request.

For each H-1B worker and each U.S. worker in the same occupation at an H-1B worker's place of employment:

1. Name, address, occupation, social security number, period of employment in each place and area of employment, entire petition package, all subsequent LCAs used for each worker, date H-1B non-immigrant entered into the U.S., date H-1B worker entered into employment, documentation in support of any unpaid periods, documentation of termination, including notice to USCIS and offer of transportation home, if applicable.

2. Rate of pay, hours of work, gross pay, deductions, net pay, and documentation of withholding taxes remitted to taxing authorities and benefit deductions to benefit providers.
3. Fringe benefit plan(s) offered and provided.
4. And all of the records required for public access, such as:
  - All LCAs.
  - Wage rate to be paid to H-1B worker.
  - Full and clear explanation of your actual wage system (including demonstration of its application).
  - Prevailing wage rate and its source (including demonstration of its acceptability).
  - Documentation that the notice requirement was satisfied.
  - Summary of your fringe benefits to U.S. workers and H-1B workers.
  - In the event you have a corporate change: a sworn statement by a responsible official of your new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Employer Identification Number (EIN) of your new employing entity.
  - List of entities included as a "single employer" under the Internal Revenue Code.

#### *Record Retention*

You must retain required records at either your principal place of business in the U.S. or at the place of employment, whichever you designated in Section G when you filed the labor condition application (LCA).

You must retain specific H-1B records for:

- a period of one year beyond the last date on which you employed any H-1B worker under the LCA, or
- if you did not employ any H-1B workers under the LCA, one year from the date the LCA expired or you withdrew it.

You must retain all payroll records for a period of three years from the date(s) of the creation of the record(s). If an enforcement action is commenced, you must retain all records until the enforcement proceeding is completed. (See 20 C.F.R. §655 Subpart I)

#### *Change of Business Identity*

When you change your identity or structure as the result of an acquisition, merger, spin-off, or other such action, you may retain H-1B workers transferred by the change, provided you maintain a list of the H-1B workers transferred to the new employing entity and includes in the public access file the following documentation:

1. A list of each affected labor condition application (LCA) and its date of certification;
2. A description of the new entity's actual wage system;
3. The new Employer Identification Number (EIN) even if no change; and
4. A sworn statement by an authorized representative of the new employing entity expressly acknowledging it will assume all obligations, liabilities, and undertakings arising from or under attestations made in each certified and still effective LCA filed by the predecessor entity, specifically that it will:
  - Abide by the DOL's H-1B regulations applicable to the LCAs;
  - Maintain a copy of the statement in the public access file; and

- Make the document available to any member of the public or the Department upon request.

When you seek to hire new H-1B workers or obtain an extension of status, you must file new LCAs and petitions. At this time you must redetermine your H-1B dependent employer status.

#### WORKER PROTECTION

##### *Whistleblower Protection*

You are prohibited from retaliating against any current or former U.S. worker or H-1B worker or job applicant because the employee/applicant has disclosed any information to you or any other person or entity about your alleged failure to comply with any of the H-1B provisions, or because the employee has sought or cooperated in an enforcement activity.

Retaliation includes intimidating, threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other manner against a worker who has exercised worker rights under the H-1B program.

Employers that violate these provisions are subject to penalties up to \$5,000 per violation and a two-year debarment from all immigration programs as well as further administrative remedies. 20 C.F.R. Part 655.801.

##### *Displacement of U.S. Workers*

Applicable to only H-1B dependent employers and/or H-1B willful violators, the Immigration and Nationality Act (INA) provides limited protections against the displacement of U.S. workers by H-1B workers. Displacement under the INA is the layoff of a U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought in the same area of employment.

All employers are subject to the prohibition against displacing one of their own U.S. workers during the period starting 90 days before and ending 90 days after the filing of an H-1B visa petition or extension in conjunction with a willful violation of any of the provisions pertaining to wages/working conditions, strike/lockout, notification, labor condition application specificity, displacement, or recruitment (20 C.F.R. §655.805(a)(2) through (9)) or a willful misrepresentation of a material fact on the labor condition application (20 C.F.R. 655.805(a)(1)).

Employers that violate these provisions are subject to a super penalty up to \$35,000 per violation and a three-year debarment from all immigration programs as well as further administrative remedies.

#### ENFORCEMENT

##### *Investigation Authority*

There are four specific authorities by which the Wage and Hour Division (WHD) can conduct an investigation of an H-1B employer:

1. A complaint from an aggrieved party or organization alleging a violation of the regulations (Subpart H and I of 20 C.F.R. 655) that has occurred within the 12 month period prior to the filing of a complaint.
2. Credible information from a known source that an H-1B employer willfully 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 conditions include: wages, benefits, working conditions, strike/lock out, displacement of U.S. workers, displacement of U.S. workers by secondary employer\*, and recruitment of U.S. workers\*.

(\* only applies to H-1B dependent employers and willful violator employers). Examples of a credible source include:

- A. Neighboring non-competitor who was told by H-1B workers that they were not being paid for travel expenses;
  - B. Payroll service who was instructed to illegally reduce the wages of H-1B workers;
  - C. Community activist who reports that H-1B workers have reported that they are not paid for all hours of work;
  - D. Police officer who reports that H-1B workers did not receive their last paychecks.
3. Random investigation of an H-1B employer who was previously determined (within the past 5 years) by Department of Labor or Department of Justice to be a willful violator of the LCA attestations.
4. Personal certification by the Secretary of Labor that there is reasonable cause to believe that the H-1B employer is not in compliance with the LCA attestations.

#### *Filing a Complaint*

Only an aggrieved party or a credible source can file a complaint with the Wage and Hour Division (WHD). The allegations contained in the complaint must have occurred within the 12 months immediately preceding the receipt of the complaint by DOL.

In addition to completing the complaint form WH-4, the complaining party should provide as much detailed information in support of the allegations as is available. This information helps the WHD determine whether there is reasonable cause to initiate an investigation.

Instructions for completing a complaint form WH-4 and contacting the appropriate local WHD office may be found at [https://www.dol.gov/esa/forms/whd/fts\\_wh4.htm](https://www.dol.gov/esa/forms/whd/fts_wh4.htm).

A complainant's identity will be kept confidential to the maximum extent permitted by law.

#### *Good Faith Defense/Industry Standards Defense*

The H-1B Visa Reform Act of 2004 amendments to the INA provide a provision under which an H-1B employer is considered to have complied in good faith with the program requirements notwithstanding a technical or procedural failure to meet such requirements if the employer:

- Made a good faith attempt to comply;
- Voluntarily corrected the failure within 10 business days of having it explained by the Department of Labor or another enforcement agency; and
- Has not engaged in a pattern or practice of **willful** violations.

This does not apply to failures to meet attestation requirements.

The use of this defense can result in a no violation letter from the Administrator.

These amendments do not absolve the employer of the obligation to pay any back wages owed to an H-1B employee. However, they do provide a waiver of civil monetary

penalties (CMPs) and debarment if an employer can demonstrate that its failure to pay the prevailing wage was based upon a calculation consistent with recognized industry standards and practices, provided the employer has not engaged in a pattern or practice of willful violations under the H-1B program.

#### *Remedies*

Regulations authorize the Wage and Hour Division (WHD) to seek compliance and back wage restitution, penalties, debarment and other remedies where appropriate.

Back wages are determined based upon the facts of the investigation and are computed to compensate an employee for a variety of monetary losses where the H-1B worker did not receive free and clear payment of the required wage rate or benefits, or where the worker was required to pay impermissible fees or expenses.

Sometimes remedies require an H-1B employer to post a notice where this requirement was not satisfied prior to the WHD intervention or to restore employment to a U.S. worker.

The statute and the regulations require that civil money penalties (CMPs) and debarment from all immigration programs be imposed when certain provisions are violated. CMPs are based upon the severity of the violation and the number of times the violation recurred or the number of affected employees. These CMPs can be increased or decreased by factors such as:

- The size of the employer;
- Previous history of violations by the employer under the INA and the regulations found at Subparts H and I of 20 C.F.R. 655);
- Efforts made by the employer in good faith to comply with these provisions;
- The employer's explanation of the violations;
- The employer's commitment to future compliance;
- The extent to which the employer achieved a financial gain due to the violations, or the potential financial loss, potential injury or adverse effect with respect to other parties.

A CMP can be assessed not to exceed \$1,000.00 or \$5,000.00 or \$35,000.00, depending on the violation.

Many violations also result in debarment from all immigration programs ranging from one to two years (three years under the super penalty provision). Such debarment is non-discretionary and based upon the nature and seriousness of the violations.

Debarment of an H-1B employer does not invalidate the existing visas of H-1B workers, but the employer will be unable to seek any extensions or green cards during the period of debarment.

Specific CMPs and terms of debarment are listed by violation at 20 C.F.R. §655.810(b) and (d).

#### *Appeals Process*

At the conclusion of an investigation by the Wage and Hour Division (WHD), the H-1B employer and all other interested parties will be sent a letter of final determination by the Administrator which sets forth a summary of and the remedies necessary to address any violations disclosed by the investigation. The employer will also receive a summary of unpaid wages detailing the amount of restitution due to

each employee who was not properly compensated. If the investigation disclosed no violations, the Administrator will issue a no violation determination letter.

The determination letter will also advise all of the parties of their rights to request a hearing if they dispute the findings and the procedure for filing such an appeal. This appeal must be made to the Chief Administrative Law Judge (ALJ) in Washington, D.C., and not to the local or national WHD. If there is no appeal, the determination letter becomes the final and non-appealable order, thus the final agency action of the Secretary of Labor.

If the Chief ALJ accepts the appeal, a hearing will be scheduled. After a hearing the presiding ALJ will issue a decision and order which can be appealed to the Administrative Review Board (ARB) of the Department within 30 calendar days. After a review, the ARB either declines to entertain the appeal or reviews the record and issues its own final decision and order.

Once there is a final agency action, all back wages and CMPs are due in full and the Administrator notifies the Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA) and the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) about any periods of debarment. During the debarment period, OFLC will not approve any LCAs and USCIS will not process any petitions for the named H-1B employer.

*Additional Obligations for H-1B Dependent Employers or Willful Violators (excluding H-1B1 and E-3 nonimmigrants)*

The following additional obligations generally do not apply to the employment of exempt H-1B workers or labor condition application(s) (LCA) approved exclusively in support of exempt workers. An exempt H-1B worker is one who receives at least \$60,000 per year in wages or has attained a master's or higher degree in a specialty related to the intended H-1B employment, and who is or will be employed pursuant to an LCA approved exclusively in support of exempt H-1B workers.

However, no such exemption from these obligations is available for an H-1B worker hired between February 17, 2009 and February 16, 2011 if the employer has received funding under the Troubled Assets Relief Program (TARP) or Section 13 of the Federal Reserve Act.

*Recruitment of U.S. Workers*

U.S. workers must be given fair consideration for jobs, and H-1B workers must not be favored over U.S. workers. All H-1B dependent employers or willful violators are required to recruit U.S. workers in good faith in accordance with their industry standards. The recruitment methods that an employer uses must include internal and/or external recruitment, and at least some active recruitment. Passive recruitment by itself is never sufficient.

The employer must conduct recruitment prior to filing a labor condition application (LCA), petition, or extension of status supported by the LCA, and must offer compensation at no less than the required wage rate (RWR). This regulation applies only to H-1B workers and not H-1B1 or E-3 workers.

The employer shall not apply otherwise-legitimate screening criteria in a manner which would skew the recruitment

process in favor of H-1B nonimmigrants. Legitimate criteria mean criteria which are:

- legally recognized and do not violate any other laws;
- relevant to the job's duties and responsibilities; and
- normal and customary based upon the practices of the industry.
- The employer must maintain documentation of its recruitment, as well as applications, interview notes, job offers and responses. The employer must have a summary of its recruitment methods and time frames in the public access file.

The additional obligations above generally do not apply to employers who file an LCA approved exclusively in support of exempt H-1B workers. An exempt H-1B worker is one who receives at least \$60,000 per year in wages or has attained a master's or higher degree in a specialty related to the intended H-1B employment and who is or will be employed pursuant to an LCA approved exclusively in support of exempt H-1B workers.

However, no such exemption from these obligations is available for an H-1B worker hired between February 17, 2009 and February 16, 2011 if the employer has received funding under the Troubled Assets Relief Program (TARP) or Section 13 of the Federal Reserve Act.

*Offer of Employment to U.S. Applicant*

All H-1B dependent employers and/or willful violators are required to offer a job to any U.S. applicant who applies and is equally or better qualified for the job than the H-1B nonimmigrant. This regulation applies only to H-1B workers and not H-1B1 or E-3 workers. Questions or complaints concerning any non-selection should be referred to:

U.S. Department of Justice  
Civil Rights Division  
Office of Special Counsel (OSC) for Immigration-Related Unfair Employment Practices  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The U.S. Department of Justice also administers several statutes concerning employment discrimination based on national origin, citizenship status, and immigration document abuse.

You may contact the OSC at 800-255-7688 and visit their web site to view FAQs at [www.USDOJ.gov/crt/osc](http://www.USDOJ.gov/crt/osc).

*Direct Displacement of U.S. Workers, Secondary Displacement of U.S. Workers, and Secondary Displacement Inquiry*

The following additional obligations apply only to H-1B dependent employers and H-1B willful violators. They do not apply to the employment of exempt H-1B workers or the filing of labor condition applications (LCAs) approved exclusively in support of exempt workers. An exempt H-1B worker is one who receives at least \$60,000 per year in wages or has attained a master's or higher degree in a specialty related to the intended H-1B employment and who is or will be employed pursuant to an LCA approved exclusively in support of exempt H-1B workers.

However, no such exemption from these obligations is available for an H-1B worker hired between February 17, 2009 and February 16, 2011 if the employer has received funding under the Troubled Assets Relief Program (TARP) or Section 13 of Federal Reserve Act.

If you are an H-1B dependent employer, you are subject to the prohibition against displacing any of your own U.S. workers with an H-1B worker during the period starting 90 days before and ending 90 days after the filing of an H-1B visa petition or extension. Displacement under the INA is the layoff of a U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought in the same area of employment.

Often an H-1B employer sends an H-1B worker to a secondary employer's worksite. The displacement prohibition extends to the displacement of a U.S. worker at this other/secondary employer's worksite where there are indicia of an employment relationship between the H-1B worker and the other/secondary employer even though there is no per se employment relationship. Indicia of employment are determined on a factual basis depending upon the economic realities and include factors such as the right to control the performance of the job. The regulations at C.F.R. §655.738(d)(2) provide further measures of indicia. The prohibition against secondary displacement extends from the period beginning 90 days before and ending 90 days after the placement of the H-1B worker at the site.

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This packet is designed to gather the necessary information for us to assist your company in preparing an H-1B visa petition for filing with USCIS. Therefore it is important that the information be as accurate as possible.

The person who has hiring authority for your company should complete the H-1 Packet (Part A – Employer). The foreign national will need to complete H-1B Packet (Part B – FN). Please send the completed packets (Employer and Employee Sections) as well as all supporting documentation (see checklist following each section) to BRAVLIN PC, 4001 N. 9<sup>th</sup> Street, Suite 222, Arlington, VA 22203, 703 243 1474 (work), 703 243 1494 (fax), [INFO@BRAVLIN.COM](mailto:INFO@BRAVLIN.COM).

PLEASE BE ADVISED THAT RETURNING THE H-1B PACKET TO US DOES NOT ESTABLISH ATTORNEY-CLIENT RELATIONSHIP. NO WORK WILL BE PERFORMED UNTIL A MUTUALLY EXECUTED WRITTEN RETAINER AGREEMENT HAS BEEN SIGNED AND THAT THE LEGAL FEE HAS BEEN PAID.

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**BRVLIN PC  
REQUEST FORM FOR H-1B PETITION  
CHECKLIST**

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- Completed Part A – Employer Section
- Job offer letter, summary of job offer, or employment contract
- End user letter (applicable to all IT related positions in which the H-1B worker will be assigned to work for a third-party site)(See Attachment 2 for a template letter)
- Your company's most recent tax return or financial statements, if the employer has less than 20 employees
- Company brochure
- A copy of your company's benefits plan offered to all employees (if your company is not offering the same benefits to the foreign national, please explain why)
- Base filing fee of \$460.00 payable to "US Department of Homeland Security" \*\* (must be paid by your company. Your company cannot ask the foreign national to reimburse for this fee, as the law requires H-1B employer to pay for this)
- Anti-fraud fee of \$500.00 payable to "US Department of Homeland Security" (Must be paid by your company. Your company cannot ask the foreign national to reimburse for this fee, as the law requires H-1B employer to pay for this)
- Corporate user fee of \$750.00 or \$1,500.00 payable to "US Department of Homeland Security"<sup>10</sup> (Must be paid by your company. Your company cannot ask the foreign national to reimburse for this fee, as the law requires H-1B employer to pay for this) If this petition is a second or subsequent extension request or your company is affiliated with an institution of higher education or is a nonprofit/governmental research organization, then this fee is exempted
- Filing fee of \$370.00 payable to "US Department of Homeland Security" if the foreign national has family member(s) who will be filing for an extension or change of status application along with the H-1B filing (this may be paid for by the foreign national).
- Filing fee of \$85.00 biometric fee payable to "US Department of Homeland Security" for **each family member** who will be filing for an extension or change of status application.
- Premium Processing Fee of \$2,500.00 payable to "US Department of Homeland Security" (Optional. Must be paid by your company. In rare instances, a foreign national may pay for the premium processing if the petitioning employer establishes to the satisfaction of the WHD that the premium processing was requested specifically at the behest of the foreign national for compelling personal reasons.)
- Legal fee to be determined \*\* (To be paid by your company)\*\*
- Expenses will be billed to your company \*\*

**\*\* Your company is generally responsible for the legal fees, filing fees, and expenses associated with the H-1B filing.**

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<sup>10</sup> If Your company has 25 or less employees, the corporate user fee is \$750.00. Your company with over 25 employees is required to pay \$1,500.00.

**PART A**  
**To Be Completed by Your Company (Employer)**

Legal Name of the Foreign National

Last Name: Click or tap here to enter text. First Name: Click or tap here to enter text.

Middle Name: Click or tap here to enter text. Any Alias, Nick Name, aka: Click or tap here to enter text.

Legal Name of Your Company: Click or tap here to enter text.

Trade Name, if any: Click or tap here to enter text.

Principal Place of Business: Click or tap here to enter text.

*Street address, Suite #, City/State, and Zip Code (No PO Box)*

Company Telephone Number: Click or tap here to enter text.

Does the foreign national have any ownership interest in your company? Yes No .

If yes, please explain the percentage of his ownership interest and whether the foreign national has the voting right: Click or tap here to enter text.

Has your company ever filed an immigrant visa petition for the foreign national? Yes No .

If yes, please explain the outcome of the visa petition filing and provide us with a copy of the decision (e.g., approval notice(s)/denial notice(s)).

Explanation: Click or tap here to enter text.

Has your company ever previously filed a nonimmigrant visa petition for the foreign national?

Yes No . If yes, please explain the outcome of the visa petition filing and provide us with a copy of the decision (e.g., approval notice(s)/denial notice(s))

Explanation: Click or tap here to enter text.

Is your company an H-1B Dependent Employer? Yes No

*If your company falls within one of the following conditions, it is considered to be an "H-1B Dependent Employer", and additional attestations must be provided.*

Number of Full Time Employees	Number of H-1B Workers
1 to 25	8 or more
26 to 50	13 or more
51 or more	15% or more

*Additional Attestations for H-1B Dependent Employers are as follows:*

- Attest that the employer will not displace US workers at its job site, or at its vendor's job site [20 CFR §655.738(e)]*
- Require to conduct recruitment efforts before hiring H-1B workers [20 CFR §655.739(i)]*

Is your company a willful violator? Yes No

*The employer is a willful violator if the employer has been found during the five (5) years preceding the date of the application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact.*

If the foreign national's jobsite is different from your company's principal place of business, please provide the street address of the jobsite (list all possible jobsite locations):

Click or tap here to enter text.

*Street address, Suite #, City/State, and Zip Code (No PO Box)*

Your company's Federal Employer Identification Number (FEIN): #Click or tap here to enter text.

Year upon which your company was established: Click or tap here to enter text.

Hiring Official's Name and Title: Click or tap here to enter text.

**ADDITIONAL INFORMATION, COMMENTS OR QUESTIONS FROM YOUR COMPANY:**

Click or tap here to enter text.

**APPENDIX A: WAGE/PAY SCALE SYSTEM  
(For Public Access File)**

*If your company does not have a wage/payscale system in place, please indicate factors used to determine wages paid to your company employees. Response should be as specific as possible.*

**FACTORS CONSIDERED** (check all that apply)

**EXPERIENCE**

- Length of experience
- Breadth of experience
- Type of experience

**QUALIFICATIONS**

- Level/subject areas of degrees
- Skills, abilities, specific expertise
- Specialized knowledge
- Additional Qualifications

**JOB RESPONSIBILITY/FUNCTION**  
(specify)

- Click or tap here to enter text.
- Click or tap here to enter text.
- Click or tap here to enter text.

**OTHER FACTORS (specify)**

- Cost of living
- Periodic salary adjustment
- Higher level of duties/resp.

**NARRATIVE DESCRIPTION**

(How factors affect placement on wage range indicated below)

Click or tap here to enter text.

**APPENDIX B: DETERMINATION OF ACTUAL WAGE RATE PAID TO COMPANY EMPLOYEES  
(CONFIDENTIAL – FOR DEPARTMENT OF LABOR PUBLIC ACCESS FILE)**

*LEGAL NOTICE: Your company is required to pay H-1B Employee at the wage rate that is no less than the local prevailing wage rate or **the actual wage rate** paid to your other employees, whichever is higher. The actual wage is the wage rate paid to your company's other employees at the worksite with similar experience and qualifications for the specific employment in question.*

*In the space below, list all employees in your company who have the similar experience and qualifications for the position being offered to H-1B Employee. Enter "None" if you do not employ anyone who has the similar experience and qualifications for the specific employment in question.*

*Besides this worksheet, your company must prepare detailed payroll of these employees and make the payroll record available to the DOL in the event of investigation. **Detailed payroll records must be kept at the place of employment beginning with the date the labor condition application is submitted and continuing throughout the period of employment.***

*The payroll records for each employee must include: (1) employee's full name; (2) employee's home address; (3) employee's occupation; (4) employee's rate of pay; (5) hours worked each day and each week by the employee if paid on other than a salary basis, or the prevailing or actual wage is expressed as an hourly wage; (6) total additions to or deductions from pay each pay period by employee; and (7) total wages paid each pay period, date of pay and pay period covered by the payment by employee.*

NAME OR UNIQUE ID ASSIGNED TO EACH EMPLOYEE	(Attach add'l sheet if necessary ) START DATE	SALARY
1. Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
2. Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
3. Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
4. Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
5. Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
6. Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

**APPENDIX C: FACTORS IN DETERMINING THE WAGE DIFFERENCE, IF ANY, BETWEEN  
THE H-1B WAGE OFFER AND THE ACTUAL WAGE RATE  
(For Public Access File)**

*If applicable, please explain the factors which your company uses in determining the wage offer to the foreign national in relation to the actual wage rate that you pay to other employees. The purpose is to provide legitimate business reasons for any deviation of salaries between what you have offered to the foreign national and what you pay to other employees.*

**FACTORS CONSIDERED** (check all that apply)

**EXPERIENCE**

- Length of experience
- Breadth of experience
- Type of experience

**QUALIFICATIONS**

- Level/subject areas of degrees
- Skills, abilities, specific expertise
- Specialized knowledge
- Additional Qualifications

**JOB RESPONSIBILITY/FUNCTION**  
(specify)

- Click or tap here to enter text.
- Click or tap here to enter text.
- Click or tap here to enter text.

**OTHER FACTORS** (specify)

- Cost of living
- Periodic salary adjustment
- Higher level of duties/resp.

**NARRATIVE DESCRIPTION**

(Indicate how factors affect placement on wage range)

Click or tap here to enter text.

**APPENDIX D: SUMMARY OF BENEFITS OFFERED  
(For Public Access File)**

*Please use this sheet to provide a summary of the benefits offered to U.S. workers in the same occupational classifications as the foreign national. You must also provide a statement as to how any differentiation in benefits is made, **if not all employees are offered or receive the same benefits** (such summary need not include proprietary information such as the costs of the benefits to your company, or the details of stock options or incentive distributions), and/or, where applicable, a statement that some/all H-1B non-immigrants are receiving "home country" benefits.*

**PROVIDE A SUMMARY OF THE BENEFITS OFFERED TO US WORKERS IN THE SAME OCCUPATIONAL CLASSIFICATIONS AS THE POSITION OFFERED TO THE FOREIGN NATIONAL**

Click or tap here to enter text.

**PROVIDE A SUMMARY OF THE BENEFITS OFFERED TO THE FOREIGN NATIONAL, IF IT IS DIFFERENT FROM THE ABOVE**

*(Please be advised that H-1B regulations require the employer to offer the foreign national the benefits and eligibility for benefits provided as compensation for services on the same basis, and in accordance with the same criteria, as it offers to U.S. workers.)*

Click or tap here to enter text.

## DECLARATION BY THE EMPLOYER

*The company named in this H-1B packet, through the undersigned authorized company official, under penalty of perjury under the laws of the United States certifies to the following statements:*

- *We have carefully reviewed the conditions as outlined in this H-1B packet, which includes detailed information regarding the LCA filing, Public Access File Recordkeeping, issues relating to H-1B petition, our company's obligations after H-1B visa petition has been approved, Export Control, FDNS Site Visit, H-1B Rules and Regulations;*
- *We agree that we will comply with the rules and regulations in their entirety as set forth in the H-1B packet;*
- *The information that we have completed in this H-1B packet is true and accurate to the best of our knowledge;*
- *The H-1B non-immigrant will be paid the higher of either the ACTUAL WAGE or the PREVAILING WAGE;*
- *The employment of this individual will not adversely affect working conditions of other similarly employed US workers;*
- *The H-1B non-immigrant will be paid for non-productive time;*
- *We have offered to the H-1B non-immigrant the benefits on the same basis as offered to US workers;*
- *There is no strike, lockout or work stoppage in our company for the position offered to H-1B non-immigrant;*
- *We will not make "unauthorized deduction" from the H-1B non-immigrant's wage rate;*
- *We certify that we have reviewed the export control regulations and that we are in compliance with the export control regulations in the filing of the H-1B petition;*
- *We acknowledge and affirm that BRAVLIN PC's legal services in this H-1B filing do not include legal work in analyzing our export control compliance. We understand that releasing or providing access to the foreign national of controlled technology or technical data covered under the export control regulations, without first obtaining the required export license, is a violation of federal law, which carries severe civil and criminal penalties. We have been advised to seek independent legal assistance on the issue of export control compliance in the H-1B petition filing. We hereby hold BRAVLIN PC, its officers, attorneys, employees, independent contractors, staff, workers, agents, or anyone under employ of BRAVLIN PC, and the heirs of all of the above-mentioned (hereinafter collectively as "the firm"), harmless, come to the firm's defense, and release the firm from liability should our company is found in violation of the export control regulations in this H-1B filing.*

### EMPLOYER

Click or tap here to enter text.

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#### Signature

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Date: Click or tap to enter a date.

***Please return this completed request packet to:***

**BRAVLIN PC  
4001 N. 9<sup>th</sup> Street, Suite 222  
Arlington, VA 22203  
E-mail: INFO@BRAVLIN.COM**

## ATTACHMENT 1

### DETAILED BREAKDOWN OF THE DUTIES/RESPONSIBILITIES PERCENTAGE OF TIME, AND COURSEWORK

Duties	Specific Duties to be Performed	Coursework	Percentage of Time
<p><b>Coordinate with inventors and applicants, especially in the areas of biomedical engineering, biotechnology, biochemistry, and molecular biology, to prepare and draft innovation disclosures for filing patent applications.</b></p>	<ul style="list-style-type: none"> <li>● Participate in invention disclosure meeting with inventors and applicants to understand and clarify new inventions and technologies in their products, especially in the fields of biomedical engineering, biotechnology, biochemistry and microbiology.</li> <li>● Study and present the current technologies and academic researches in the relevant fields to their products.</li> <li>● Provide guidance and counsel to assist inventors and applicants to draft and prepare innovation disclosures regarding the inventions that they want to protect.</li> <li>● Review innovation disclosures provided from inventors and applicants to ensure that the disclosures include all necessary information for filing patent application.</li> </ul>	<p>ABC University Bachelor of Science</p> <ul style="list-style-type: none"> <li>● General Zoology (b)</li> <li>● General Zoology Lab. (b)</li> <li>● Introduction of Zoology</li> <li>● Introduction of Virology</li> <li>● Organic Chemistry (b)(1)</li> <li>● Cell Biology</li> <li>● Biotechnology and Law</li> <li>● Organic Chemistry (b)(2)</li> <li>● Biochemistry (a)(1)</li> <li>● Molecular Biology</li> <li>● Cell Growth and Apoptosis</li> <li>● Genetics</li> <li>● Biochemistry (a)(2)</li> <li>● Bioinformatics</li> <li>● Molecular Cell Biology (a)</li> <li>● Molecular Biology</li> <li>● Introduction to Microbiology</li> <li>● Introduction to Immunology</li> <li>● Advanced Microbiology</li> </ul>	<p>15%</p>
<p><b>Work closely with senior patent attorneys to provide technical support and technical summary, especially in the areas of biomedical engineering, biotechnology, biochemistry, and microbiology, on the patent practice.</b></p>	<ul style="list-style-type: none"> <li>● Meet with senior patent attorneys to understand and discuss inventions, especially in the areas of biomedical engineering, biotechnology, biochemistry, and microbiology, on which the attorneys are working;</li> <li>● Study and research the current technologies and academic researches in the relevant fields to the inventions that attorneys assign;</li> <li>● Prepare a technical brief, including the introduction of the technology, analysis of the technical difference, and the searching results of the assigned invention, to the attorneys.</li> </ul>	<p>ABC University Bachelor of Science</p> <ul style="list-style-type: none"> <li>● General Zoology(b)</li> <li>● General Zoology Lab. (b)</li> <li>● Introduction of Zoology</li> <li>● Introduction of Virology</li> <li>● Organic Chemistry (b)(1)</li> <li>● Cell Biology</li> <li>● Biotechnology and Law</li> <li>● Organic Chemistry (b)(2)</li> <li>● Biochemistry (a)(1)</li> <li>● Molecular Biology</li> <li>● Cell Growth and Apoptosis</li> <li>● Genetics</li> <li>● Biochemistry (a)(2)</li> <li>● Bioinformatics</li> <li>● Molecular Cell Biology (a)</li> </ul>	<p>15%</p>

<p><b>Work closely with senior patent attorneys on various aspects of the patent practice, including assisting in the evaluation of invention disclosures, drafting and prosecuting patent applications, responding to USPTO office actions, and participating in examiner interview.</b></p>	<ul style="list-style-type: none"> <li>● Evaluate biotechnological invention disclosures of inventors or applicants and provide comments on their novelty, non-obviousness or other requirements for patentability.</li> <li>● Under the supervision of senior patent attorneys, prepare and prosecute patent applications in the USPTO according to the invention disclosures, and modify patent application drafts provided by applicants to comply with the USPTO form requirements.</li> <li>● Under the supervision of senior patent attorneys, provide comment and prepare draft response to USPTO office action.</li> <li>● Participate in examiner interviews with senior patent attorneys and provide technical advice.</li> </ul>	<p>ABC University Bachelor of Science</p> <ul style="list-style-type: none"> <li>• Zoology(b)</li> <li>• Zoology Lab. (b)</li> <li>• Introduction of Zoology</li> <li>• Introduction of Virology</li> <li>• Organic Chemistry (b)(1)</li> <li>• Cell Biology</li> <li>• Biotechnology and Law</li> <li>• Organic Chemistry (b)(2)</li> <li>• Biochemistry (a)(1)</li> <li>• Molecular Biology</li> <li>• Cell Growth and Apoptosis</li> <li>• Genetics</li> <li>• Biochemistry (a)(2)</li> <li>• Bioinformatics</li> <li>• Molecular Cell Biology (a)</li> <li>• Molecular Biology</li> <li>• Introduction to Microbiology</li> <li>• Introduction to Immunology</li> <li>• Advanced Microbiology</li> </ul>	<p>60%</p>
<p><b>Interface with inventors and applicants, especially in Asian area, to provide advice and to response to questions and inquiries as to U.S. patent-related matter.</b></p>	<ul style="list-style-type: none"> <li>● Provide patent prosecution advice on patent applications to inventors and applicants.</li> <li>● Response to inventors and applicants' inquiries as to their pending patent applications and inquiries as to patent-related matter</li> <li>● Review and monitor file wrappers of patent applications</li> </ul>	<ul style="list-style-type: none"> <li>● Law E 523, Entrepreneurial Law Clinic</li> <li>● Law P 501, Intellectual Property Law Core</li> <li>● Law P 510, Advanced Research and Writing Seminar</li> <li>● Law P 545, Advanced Patent Law Seminar</li> <li>● Law P 590, Intellectual Property Law Tutorial</li> <li>● Law P 550, Patent Prosecution</li> </ul>	<p>10%</p>

**DETAILED EXPLANATION OF THE DUTIES AND RESPONSIBILITIES AND HOW THE BENEFICIARY'S EDUCATION IS RELATED TO THE JOB**

**Coordinate with inventors and applicants, especially in the areas of biomedical engineering, biotechnology, biochemistry, and molecular biology, to prepare and draft innovation disclosures for filing patent applications. 15% - 6 hours per week**

Specific duties to be performed:

- Participate in invention disclosure meeting with inventors and applicants to understand and clarify new inventions and technologies in their products, especially in the fields of biomedical engineering, biotechnology, biochemistry and microbiology.
- Study and present the current technologies and academic researches in the relevant fields to their products.
- Provide guidance and counsel to assist inventors and applicants to draft and prepare innovation disclosures regarding the inventions that they want to protect.
- Review innovation disclosures provided from inventors and applicants to ensure that the disclosures include all necessary information for filing patent application.

Detailed description of the duties:

This phase of the position focuses on assisting and collaborating with inventors and applicants to generate complete innovation disclosures for filing patent applications, especially in the fields of biomedical engineering, biotechnology, biochemistry, and microbiology. This constitutes about 15% of the duties and responsibilities. To develop a high-quality invention disclosure, the beneficiary will be required to actively communicate and collaborate with inventors and applicants via conducting personal or telephone interviews and carefully studying draft materials provided by the inventors and applicants. If inventions are involved in biotechnological or life science fields, the draft materials generally include lots of experimental processes and data, and re-

search references concerning applications of cellular or molecular biology to make or modify products or processes. The biological products may include DNA, RNA, proteins, hormones, cell lines, organisms, engineered tissues, vaccines and artificial body parts. The processes in biotechnology would include various methods for cloning, isolating, sequencing, and manipulating DNA, RNA, proteins, or even microbes.

To study and analyze information and data in the inventors' draft materials regarding to the biotechnological applications, the beneficiary must have the in-depth scientific and industrial disciplines and knowledge focused on understanding and manipulating biological products, often at the molecular level, which is normally acquired in one's college study toward a bachelor's degree in biotechnology, life science or a related field. All inventors much value their inventions, and they very like to share and discuss every detail of their inventions, including background information, defects of the traditional technology, how they conceive the inventions, extraordinarily experimental results, and potential applications of the inventions. During the collaboration, many inventors prefer to have active and constructive responses regarding their invention, rather than only have simply conversation. Consequently, at this phase of the position, the beneficiary must have the biotechnological background and specialized knowledge to understand the information that is being conveyed by inventors or applicants.

For example, if an inventor proposes that nucleic acid sequences having a specific function exists within certain bacteria in nature, the invention may be involved in at least isolating and cloning the bacteria, purifying whole nucleic acid in the bacteria, sequencing the purified nucleic acid, locating the functional sequence of the nucleic acid, constructing an expressing plasmid including the sequence, transforming the plasmid into the bacteria, expressing the transformed plasmid, and identifying the function of the specific nucleic acid sequence. It is clear that the processes and necessary knowledge and technique are complex and extensive. The courses such as *Organic Chemistry, Cell Biology, Biochemistry, Molecular Biology, Genetics, and Microbiology* were directly aligned with the skills needed to effectively and efficiently realize the invention and figure out inventive and critical parts of the invention, which are normally acquired in one's college study toward a bachelor's degrees in technology, life science or a related field.

Sometimes, an inventor who wants to obtain patent protection merely has a basic conception of his invention and a preliminary product or prototype including the invention. These materials, however, are not considered to sufficiently establish the date of invention. Under the U.S. patent act, the date of invention is a critical date that the invention was completed or "made". In practice, the invention disclosure represents the first official recording of the invention to establish the date and includes a complete description of the novelty, non-obviousness and enablement of the invention in such a manner that one having ordinary skill in the particular art could reproduce the invention. Therefore, the beneficiary will initially participate in invention disclosure meeting, based on his specific knowledge in biotechnology, with inventors to understand their innovative ideas and discuss what the inventors regard as the new technical features.

After the invention disclosure meeting with the inventors, the beneficiary will carefully study the materials and information, such as industry and technology journals, professional reports, and other research publication on innovation, collected in the meeting, and search existing technologies and academic researches relevant to the invention via using various IP or technology databases in the fields of biomedical engineering, biotechnology, chemistry, and microbiology, for example, Google Patent (<https://patents.google.com>), USPTO Patent Database (<http://patft.uspto.gov>), Espacenet (<https://worldwide.espacenet.com>), SIPO Patent Database (<http://www.pss-system.gov.cn/sipopublicsearch/portal/uiIndex.shtml>), PubMed (<https://www.ncbi.nlm.nih.gov/pubmed/>), and Embase (<https://www.elsevier.com>). Once the beneficiary finishes the searching, the beneficiary will organize the information to generate a preliminary search report for the inventors' reference. If necessary, the beneficiary will conduct another meeting with the inventors to present the finding in the report, so as to make the inventors understand the relevant published technologies and the potential risk as launching the product.

During the discussion, the beneficiary will assist the inventors to draft and prepare a complete invention disclosure based on the original technical disclosure and the information in the searching. The preliminary search report will help the inventors to realize the development of the relevant technology and to distinguish the differences between the invention and the existing technology. Accordingly, it is beneficial to figure out the distinctive feature and the protection scope of the invention. The beneficiary will provide guidance and counsel to assist inventors to add detailed information or evidence to show the novelty, non-obviousness and enablement of the invention.

The skill necessary to perform such extensive research goes into the issue of novelty, non-obviousness and enablement of an invention is a mixture. First, as mentioned above, the beneficiary is required to processes disciplines and knowledge focused on understanding and manipulating biological materials, which is normally acquired in one's college study toward a bachelor's degree in biotechnology, life science or a related field. Besides, the statutory requirements and definitions of the novelty, non-obviousness and enablement are provided in US patent law and regulations. Thus, XYZ CORP seeks a beneficiary who is refined and professional in preparing patent application. Such a beneficiary must possess the specialized knowledge and expertise gained through such preparation and prosecution courses as *Patent Prosecution, Intellectual Property Law Core*. These courses are only attainable in one's college study toward a bachelor's degree as well.

Once the inventors provide the invention disclosure draft, the beneficiary will review the draft and provide further advice to complete the invention disclosure having description showing the novelty, non-obviousness and enablement of the invention and any necessary information, so as to comply with the requirements under the U.S. patent act to establish the date of invention and the inventorship, and to prepare for filing patent applications.

Below is a list of the courses that the beneficiary had taken which provided him with the specialized knowledge necessary to perform the above-described duties.

ABC University Bachelor of Science  
1st Semester 1999/2000 General Zoology(b)  
1st Semester 1999/2000 General Zoology Lab. (b)  
2nd Semester 2001/2002 Introduction of Zoology  
2nd Semester 1999/2000 Introduction of Virology  
1st Semester 2000/2001 Organic Chemistry (b)(1)  
2nd Semester 2000/2001 Cell Biology  
2nd Semester 2000/2001 Biotechnology and Law  
2nd Semester 2000/2001 Organic Chemistry (b)(2)  
1st Semester 2001/2002 Biochemistry (a)(1)  
1st Semester 2001/2002 Molecular Biology  
1st Semester 2001/2002 Cell Growth and Apoptosis  
2nd Semester 2001/2002 Genetics  
2nd Semester 2001/2002 Biochemistry (a)(2)  
2nd Semester 2001/2002 Bioinformatics  
1st Semester 2002/2003 Molecular Cell Biology (a)

**Work closely with senior patent attorneys to provide technical support and technical summary, especially in the areas of biomedical engineering, biotechnology, biochemistry, and microbiology, on the patent practice. 15% - 6 hours per week**

Specific duties to be performed:

- Meet with senior patent attorneys to understand and discuss inventions, especially in the areas of biomedical engineering, biotechnology, biochemistry, and microbiology, on which the attorneys are working;
- Study and research the current technologies and academic researches in the relevant fields to the inventions that attorneys assign;
- Prepare a technical brief, including the introduction of the technology, analysis of the technical difference, and the searching results of the assigned invention, to the attorneys.

Detailed description of the duties:

The phase of the position effectively and efficiently provides technical support, especially in the areas of biomedical engineering, biotechnology, biochemistry, and microbiology, to senior patent attorneys so as to comprehensively understand and analyze inventions on their patent practice. XYZ CORP represents numerous patent applicants, in biotechnological industry, in obtaining patents and acting in matters and procedures as to patent practice. As mentioned earlier, biotechnology is a technology relating to the study and application of living organisms and their components to manufacture usefully bio-based products. Generally, biotechnology includes genetic modification, also called genetic engineering, which involves complex biosynthesis pathways and mechanisms. In order to understand these specialized technologies and inventions, a biotechnology knowledge is necessary to achieve success with these clients.

In terms of the actual duties and responsibilities, the beneficiary must possess a high level of biotechnology knowledge to timely provide technical support and advice to senior parent attorneys. More specifically, knowledge in different life science fields, including biomedical engineering, biotechnology, and microbiology, is required to ensure that the beneficiary is able to conduct academic and technological research and analysis of various inventions and biotech industries, to learn about their critical technologies and development and research strategies. Before one can provide technical support in biotechnology field, one must carefully study the inventions of clients and relevantly scientific and technological references, and compare the differences to find out the pros and cons. The courses such as *Organic Chemistry, Cell Biology, Biochemistry, Molecular Biology, Genetics, and Microbiology* were directly aligned with the skills and knowledge necessary to perform such research and study go into the inventions relevant to the life science field, including biomedical engineering, biotechnology, and microbiology, which are generally only attainable in one's college study toward a bachelor's degree or an advanced degree in biotechnology, life science or a related field.

After receiving a request for technical support from a senior patent attorney, the beneficiary will conduct an interview with the attorney to understand the assigned invention of the client and the requirement and demands. Then, as mentioned in the previous section, the beneficiary will carefully study the materials and information collected in the meeting, and search existing technologies and academic researches relevant to the invention via using various patent application databases or biotechnology databases.

Once the beneficiary finishes the searching, the beneficiary will organize the information to generate a technical brief, including the introduction of the technology as to the invention, analysis of the technical difference, and the searching results, for the attorney' reference. Alternatively, the beneficiary will conduct another meeting with the attorney to present the finding in the report, so as to make the attorney understand the relevant published technologies and products.

Below is a list of the courses that the beneficiary had taken which provided him with the specialized knowledge necessary to perform the above-described duties.

ABC University Bachelor of Science

1st Semester 1999/2000 General Zoology(b)  
1st Semester 1999/2000 General Zoology Lab. (b)  
2nd Semester 2001/2002 Introduction of Zoology  
2nd Semester 1999/2000 Introduction of Virology  
1st Semester 2000/2001 Organic Chemistry (b)(1)  
2nd Semester 2000/2001 Cell Biology  
2nd Semester 2000/2001 Biotechnology and Law  
2nd Semester 2000/2001 Organic Chemistry (b)(2)  
1st Semester 2001/2002 Biochemistry (a)(1)  
1st Semester 2001/2002 Molecular Biology  
1st Semester 2001/2002 Cell Growth and Apoptosis  
2nd Semester 2001/2002 Genetics  
2nd Semester 2001/2002 Biochemistry (a)(2)  
2nd Semester 2001/2002 Bioinformatics  
1st Semester 2002/2003 Molecular Cell Biology (a)

**Work closely with senior patent attorneys on various aspects of the patent practice, including assisting in the evaluation of invention disclosures, drafting and prosecuting patent applications, responding to USPTO office actions, and participating in examiner interview. 60% - 24 hours per week**

Specific duties to be performed:

- Evaluate biotechnological invention disclosures of inventors or applicants and provide comments on their novelty, non-obviousness or other requirements for patentability.
- Under the supervision of senior patent attorneys, prepare and prosecute patent applications in the USPTO according to the invention disclosures, and modify patent application drafts provided by applicants to comply with the USPTO form requirements.
- Under the supervision of senior patent attorneys, provide comment and prepare draft response to USPTO office action.
- Participate in examiner interviews with senior patent attorneys and provide technical advice.

Detailed description of duties:

The patent prosecution phase is the major component of the beneficiary's position. The beneficiary is required to possess extensive knowledge of biotechnology, U.S. patent law and the patent application process. Since the beneficiary does not presently obtain attorney or patent agent qualifications, the beneficiary will be supervised by senior patent attorneys while preparing and prosecuting patent applications.

Evaluation of invention disclosures, as described in the previous section, is the initial step to prepare a patent application in the USPTO. Under the U.S. patent act, there are three types of patents — utility patents, design patents, and plant patents. The beneficiary must thoroughly understand the proposed invention and assess which type of patents is proper to protect the invention based on his biotechnological knowledge, which is required through the above-mentioned courses in life science fields, such as *Organic Chemistry, Cell Biology, Biochemistry, Molecular Biology, Genetics, and Microbiology*. In addition, the beneficiary will preliminarily consider whether the invention satisfies several statutory requirements under the U.S. patent act, such as eligible subject matter, novelty and non-obviousness, and utility, to obtain a federal patent protection. During the evaluation, the beneficiary may contact the inventors, or discuss with the senior patent attorneys if the proposed invention could not comply with the statutory requirements or be anticipated by or obvious to existing technologies.

The beneficiary will be required to draft and prepare a patent application including different parts, such as a specification, abstract, claims, and drawings (if any). The drafting skills necessary to complete a patent application are generally attainable in one's college study courses in intellectual property law or in a professional experience in patent practice. The beneficiary will broadly and accurately describe the invention in the disclosure so that the specification complies with the written description and enablement requirements, and provides support for the potential claims relating to the invention. In addition, the beneficiary will develop a claim set with at least one claim which identifies the protect scope covering any commercial product of the applicant embodying the invention, and simple, potential design-arounds by competitors. Sometime, applicants will provide their versions of patent application drafts. The beneficiary must review the provided patent application and modify the application to comply with the above mentioned USPTO requirements. It is noted that the beneficiary must provide the drafted or modified patent applications and other attached materials to a senior patent attorney before confirmation with the applicants or submission to the USPTO.

After filing a patent application with the USPTO, a patent examiner will start reviewing the submitted application to determine whether to issue a patent or not according to the regulations discussed above. If there is any office action issued by the examiner because the content of the application does not comply with the statutory requirements, the beneficiary must carefully review the examiner's rejections and objections in the office action and provide his comments accordingly if the applicants require. If the applicants decide to file a corresponding response, the beneficiary will draft a response to the office action by arguments or amendments, with or without the applicants' instruction, within a limited time specified by the examiner. As noted above, the beneficiary must provide the drafted responses and other attached materials to a senior patent attorney before confirmation with the applicants or submission to the USPTO.

To advance the prosecution of a patent application, before submitting a written response to the office action, the applicant may consider interviewing the examiner who is reviewing the application. Generally, a senior patent attorney will take charge of the examiner's interview to discuss with the examiner. Before the interview, the beneficiary may assist the senior patent attorney to prepare an interview agenda, including proposed arguments and amendments to overcome the rejections or objections in the office action, based on the beneficiary's knowledge of technology and patent law. The beneficiary may present a summary of the disputed invention, the examiner's utilized references, and the proposed arguments, to the senior patent attorney, so that the attorney can easily and efficiently understand the specific issues of the present application. In addition, the beneficiary may participate in the examiner's interview with the senior patent attorney to timely provide technical summary and support so as to help the examiner to understand the technical differences between the disputed invention and the reference and the reason why the dispute invention should be patentable. Accordingly, the beneficiary must be fully knowledgeable of US patent laws and regulations to prepare and prosecute patent applications. The specialized knowledge to perform the above-reference duties are acquired through such preparation and prosecution courses as *Patent Prosecution*, *Intellectual Property Law Core*, *Intellectual Property Law Tutorial*.

Below is a list of the courses that the beneficiary had taken which provided him with the specialized knowledge necessary to perform the above-described duties.

ABC University Bachelor of Science  
1st Semester 1999/2000 General Zoology(b)  
1st Semester 1999/2000 General Zoology Lab. (b)  
2nd Semester 2001/2002 Introduction of Zoology  
2nd Semester 1999/2000 Introduction of Virology  
1st Semester 2000/2001 Organic Chemistry (b)(1)  
2nd Semester 2000/2001 Cell Biology  
2nd Semester 2000/2001 Biotechnology and Law  
2nd Semester 2000/2001 Organic Chemistry (b)(2)  
1st Semester 2001/2002 Biochemistry (a)(1)  
1st Semester 2001/2002 Molecular Biology  
1st Semester 2001/2002 Cell Growth and Apoptosis  
2nd Semester 2001/2002 Genetics  
2nd Semester 2001/2002 Biochemistry (a)(2)  
2nd Semester 2001/2002 Bioinformatics  
1st Semester 2002/2003 Molecular Cell Biology (a)

**Interface with inventors and applicants, especially in Asian area, to provide advice and to response to questions and inquiries as to U.S. patent-related matter. 10% - 4 hours per week**

Specific duties to be performed:

- Provide patent prosecution advice on patent applications to inventors and applicants.
- Response to inventors and applicants' inquiries as to their pending patent applications and inquiries as to patent-related matter
- Review and monitor file wrappers of patent applications

Detailed description of duties:

Please be advised that while this particular duty only constitutes 10% of the overall duties, it is nonetheless important because of the seriousness of customer relationships. Many of XYZ CORP's clients are international companies. In other words, these foreign clients fully depend on the expertise and professional knowledge of the firm to prosecute and monitor their patent applications. In addition, the U.S. patent prosecution system and regulations are sophisticated and complex. Usually, these foreign clients request professional advice and suggestion, such as whether to seek patent protection on an invention, patent claim scope to pursue in patent applications, and continuation strategies for patent prosecution, for their reference to properly prepare and prosecute their patent applications. Therefore, the beneficiary will be required to communicate with inventors and applicants via emails, international phone calls, and video calls, and prepare corresponding advice, when receiving these requests. In addition, the beneficiary will timely reply inventors and applicants to their inquiries as to patent applications or U.S. patent practice. The beneficiary will apply the knowledge of U.S. patent law and experience accumulated in his patent practice to properly response the clients. Thus, XYZ CORP seeks a beneficiary who has knowledge of patent law and experience in communication with inventors and applicants. Such a beneficiary must possess the specialized knowledge and expertise gained through such patent law courses as *Intellectual Property Law*, *Patent law*, and *Patent Prosecution*, which the beneficiary possesses. These courses, like the above listed courses, are attainable in one's college study toward a bachelor's or an advanced degree. Besides, a beneficiary preferably has at least two years of patent prosecution support and client communication experience, which the beneficiary also possesses.

Below is a list of the courses that the beneficiary had taken which provided his with the specialized knowledge necessary to perform the above-described duties.

Law E 523, Entrepreneurial Law Clinic

Law P 501, Intellectual Property Law Core  
Law P 510, Advanced Research and Writing Seminar  
Law P 545, Advanced Patent Law Seminar  
Law P 590, Intellectual Property Law Tutorial  
Law P 550, Patent Prosecution

Based on the foregoing detailed description and explanation, we believe the position offered is at a level of complexity and sophistication that requires the services of someone who holds at least a bachelor's degree in biotechnology, and patent law to perform.

ATTACHMENT 2

SAMPLE END USER LETTER (IF THE FOREIGN NATIONAL WILL BE WORKING OUT OF A CLIENT SITE)

DATE

To Whom It May Concern:

This is to verify that XYZ Vendor Inc. has contracted with ABC Corp. for the services of a Programmer Analyst provided by ABC Corp., Mr. John Smith, to work on our DEF Project.

Description of Project: (Please provide project description here)

Job Duties: (Sample job duties) Analyze systems requirements, formulate and design systems, and perform testing procedures. Configure computer programs for information flow, processing and output. Interact with management to identify key dimensions and measures for business performance. Conduct studies pertaining to development of new information systems to meet current and project needs. Plan and prepare technical reports, memoranda and instructional manuals as documentation of program development. Upgrade system and correct errors to maintain system after implementation. Provide technical support and training to users.

Minimum Job Requirement: To perform the above-mentioned job duties, we require the individual to have at least a bachelor's degree in computer science, engineering or a related field.

Duration: This is a long term project and we expect that the position will last at least X months/years from MM/DD/YYYY.

Mr. Smith is paid by, and receives employee benefits from, ABC Corp. Mr. Smith's performance of this job is directly monitored and managed by ABC Corp. Mr. Smith is not and will not be an employee of our company. He is strictly an employee of ABC Corp. who will be assigned to provide technical service to our company. All issues related to his employment, such as salary, benefits, vacation, performance review, termination, etc., are directly under the supervision of ABC Corp. Mr. Smith reports directly to ABC Corp. Our company does not have the ability to assign Mr. Smith to another job site, until it is first approved by ABC Corp.

Should you have any questions, please do not hesitate to contact our company.

Sincerely yours,

(Name)

(Title)

(Contact Info, including telephone number)