Hiring departments must gain the approval of the U.S. Department of Labor before filing an application with the United States Citizens and Immigration Services for an H-1B Temporary Worker. Hiring departments must satisfy four conditions of employment before gaining the approval of the Department of Labor.

FOUR CONDITIONS

• H-1B employer must agree to pay an H-1B nonimmigrant the “required wage rate,” which is defined as the higher of two figures: the “actual wage rate” or the “prevailing wage rate.”

• The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

• The employer must attest that at the time of filing, there is not not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment.

• The employer must provide notice of the filing of the Labor Condition Attestation in two ways:
  
  o Notice to employees at the work site;
  o Notice to the collective bargaining representative.

    ▪ If there is no bargaining unit, a paper notice, posted for ten days in at least two “conspicuous” locations at each site where the H-1B employee will be working;
    ▪ A ten-day electronic posting on the employer’s Web or internet site where vacancy notices are usually posted; or
    ▪ A one-time e-mail to all employees in the same occupational classification.
IMPORTANT

• Three major stages characterize the H-1B hiring process:

  • **Stage One:**
    Approval of the Prevailing Wage Request form with the Rhode Island Department of Labor and Training, Foreign Labor Certification Unit (Approximately 1 week)

  • **Stage Two:**
    Approval of the labor certification, form ETA 9035 by the U.S. Dept. of Labor (Approximately 1 week)

  • **Stage Three:** (after approval of ETA 9035)
    Approval of the **H-1B** visa application includes:
    
    • Forms I-129, H Supplemental, and I-129 filing fee
    • Form I-129 W
    • Copy of Labor Condition Statement (LCA)
    • Employer letter in support of the petition
    • Supporting documentation of employee qualifications
    • If applicant is in the US, documentation that confirms that current status is valid
    • Form I-539 and I-539 fee and copies of dependent documents

• There is an annual cap (occupations) and per country cap on **H-1B visas** available. Exempted from this cap are higher education institutions, non-profit and governmental research organizations.

• For tenure-track positions, departments should request approval for a full three-year period.

• Persons who are or have been in J-1 or J-2 status and are still subject to the “two-year home country residency requirement” are not eligible for change of status to H-1B until the two-year requirement is fulfilled or a waiver is obtained. The waiver process can take six months or longer.