

USDOL Targeting H-1B Pay/Benefits Compliance

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The US Labor Department is aggressively investigating compliance with the wage-rate and benefits commitments employers must make in an H-1B Labor Condition Application (LCA). These investigations are usually triggered when an H-1B employee complains that the employer failed to pay the LCA wage.

The H-1B program allows foreign nationals to work in the US in professional or specialty jobs. However, the employer must attest, among other things, that it will:

- ◊ Pay the H-1B employee at least the prevailing wage set by DOL based upon job duties and the employment location, and
- ◊ Offer the foreign worker benefits comparable to those offered to US workers in the same job classification.

DOL is taking these investigations very seriously and is assessing significant liability. For example, under a December 2010 consent order, a software consulting company agreed to pay over \$638,000 in back wages and interest for LCA violations. The company and the owner also agreed to pay more than \$126,000 in civil money penalties and interest for failing to provide the required LCA notice at each work site and for seeking a penalty from H-1B employees for terminating their employment early. The company will be debarred for a year from participating in the H-1B program.

During an investigation, DOL reviews information such as:

- The contents of the LCA itself,
- A statement of how the wage rate was set,
- Documentation showing how the prevailing wage was established,
- The original notices posted advising workers about the LCA filing,
- A summary of the benefits offered to US workers in the same occupation,
- Payroll records and dates of employment for the H-1B employee,
- A copy of the H-1B petition filed with the US Citizenship and Immigration Services (USCIS),

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- Evidence that the employer notified USCIS if the H-1B employment was terminated prior to the end of the authorized period and that the LCA was withdrawn, and
- The current or last-known address and contact information for all H-1B employees.

The investigation generally includes interviews with management officials and H-1B employees.

DOL's main goals are (i) to determine whether the employer paid each H-1B employee the LCA wage for the period the LCA remained in effect (liability for not doing so can continue even after the employee was no longer employed but the LCA was not withdrawn); and (ii) to ensure that H-1B employees' wages were not docked when they were ready, willing, and able to work but the employer did not permit them to do so. If the investigator finds that the employer is in violation, DOL normally assesses liability for back-pay, any benefits shortfalls, interest, and civil money penalties. DOL might also insist upon monitoring and auditing the company's compliance with H-1B requirements. In serious cases, DOL might debar the employer from using the H-1B program.

Read [more](#) about USDOL, USCIS, and Immigration and Customs Enforcement audits in the January 2011 edition of our *Labor Letter*.