Guidelines for Department Heads and Direct Supervisors of H-1B Workers

Immigration matters are complex and laws, procedures and regulations change frequently. No one other than the trained advisors in Office of International Programs should advise the foreign worker on immigration matters. Employees with questions or concerns should be referred to OIP. Please contact Sally O’Neill if you have questions or concerns at 994-7688, sallyo@montana.edu

The information below outlines the basics of what department heads and supervisors need to know about the H-1B visa employee and your responsibilities as the hiring authority.

What is an H-1B visa?

The H-1B visa is a non-immigrant visa used by a foreign national who will be employed temporarily in a specialty occupation. To qualify as a person in a “specialty occupation” one must have a level of training, expertise, or ability sufficient to be considered for an occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). It is also required that the foreign worker have any necessary certificate or license permitting the person to immediately practice the profession in the state of intended employment.

How to Begin the Application Process for an H-1B Visa

● It is the responsibility of the employer to complete all required paperwork and file the petition for the prospective employee. Therefore, when a department identifies a foreign worker to be employed by MSU, the department must contact Sally O’Neill at OIP to start the process for the H-1B visa. This visa process can take up to 4 months to be adjudicated by the immigration service (USCIS) so departments should keep this in mind when hiring. OIP strongly suggests that the H-1B visa application process be started six months prior to the beginning date of employment. If this is not possible then there is a premium processing option through the USCIS which costs an extra $1,225 and shortens processing time to two weeks, once filed.
Renewals should be requested 2-3 months before expiration. The same petition process takes place for both new and renewal petitions.

The costs to the department for a new H-1B visa are:

- **$1,000-OIP Processing Fee**
- **$825- USICS fee**
- **$1,225- optional USCIS premium processing fee**

The costs for the renewal for the H-1B visa are:

- **$1,000- OIP fee**
- **$325 –USCIS fee**
- **$1,225- optional USCIS premium processing fee**

Detailed instructions for the application process for the H-1B visa will be sent to the department head or supervisor once Sally O’Neill is notified of the intent to hire a new foreign worker. The following is a summary of the process:

1. Contact Sally O’Neill at OIP (sallyo@montana.edu or 994-7688).

   She will send you and the new foreign worker the appropriate documentation for your different respective parts of the petition.

2. The department will be required to provide Sally O’Neill with three documents:

   - The prevailing wage form
   - The actual wage form
   - The departmental memo.

3. Checks:

   The department must process requests for the checks that will accompany the petition. These checks are made out to The Department of Homeland Security and sent to Sally to include with the petition. If the department files using “premium processing” an additional check for $1225 will be required.
4. When Sally O’Neill receives all the documents from the department and the foreign worker, she will prepare the petition and file it with USCIS. It may take up to 4 months for the petition to be adjudicated unless premium processing is indicated.

**Departmental Requirements and Information After the Foreign Worker Arrives to MSU:**

- **Study**

  H-1B visa holders are allowed to enroll in classes at MSU only if they are not degree-seeking. This visa is for work, not study.

- **Travel**

  The H-1B visa holder may travel throughout the United States and may travel internationally. For travel out of the United States, the employee should make an appointment with Sally O’Neill first to verify that they have all the required documents. When an H-1B worker leaves for the first time, he or she must make an appointment with an American Embassy or Consulate for the visa before re-entry into the U.S.

- **Responsibilities of the Department**

  The hiring department has certain responsibilities to maintain the H-1B status of the worker. The following requirements should be met by the department:

  1. **Full-time vs. part-time:**

     The number of weekly hours that the department must employ the alien worker and that the worker must give to the department must be set as “full-time” or “part-time”.

  2. **Minimum Wage:**

     An agreement is made with the Department of Labor on a minimum wage that must be complied with throughout the duration of the employment.

  3. **Length of H-1B visa contract:**

     This can be up to three years at a time; six years total.
4. Termination:

The regulations require an employer to notify USCIS "of any changes in the terms and conditions of employment of a beneficiary that may affect eligibility under section 101(a) (15) (H) of the Act and paragraph (h) of this section." One such change in the terms and conditions of employment is the termination of the employee's employment. When an employee ceases employment, the regulations provide that "the petitioner must send a letter notifying the director or the Regional Administrator who approved the petition." For this reason, the department must inform Sally O’Neill at OIP of a termination of an H-1B visa holder as soon as possible. Failure to provide appropriate notification of termination of employment violates the requirements of the program.

5. Payment of Costs of Transportation Home:

If the employer terminates the H-1B worker prior to the end of the H-1B petition validity period for any reason, the employer is required to pay reasonable costs of return transportation to the H-1B worker’s last place of residence abroad, if this is requested by the H-1B worker.

If an H-1B worker voluntarily terminates his or her employment, an employer is not liable for the cost of return transportation.

Note: A terminated employee must depart the United States on the final day of employment with the sponsoring employer, unless he or she has secured the H-1B sponsorship of another employer or otherwise changed immigration status. Once the H-1B visa has ended, there is no grace period to leave the country.

6. Renewal:

If the department wishes to renew the visa for another three years or for the remaining time allowable on the employee’s visa, then that request should be made at least two to three months before expiration. The process for renewing is the same as for new petitions. Current H-1B visa holders may continue working after
expiration of the visa if the petition for renewal has been filed the expiration date. *(Portability Law)*

7. *Departmental responsibility for the I-9 Form:*

Departments are responsible to complete I-9 paperwork for H-1B employees. When completing the I-9 for an H-1B employee, the employer must pay particular attention to the expiration date on the I-94 card, if the H-1B employee has entered the U.S. from abroad. Some ports-of-entry add a 10-day period to the H-1B petition expiration date, so if the employer does not compare the H-1B approval notice to the I-94, the H-1B employee may inadvertently be allowed to work for 10 extra days beyond the H-1B petition expiration date. Departments with questions about filling out the I-9 for H-1B holders may contact Darcy Tickner at Payroll- 994-7926.

8. *Change in duties or terms and conditions of employment*

When there is a change in the duties or terms and conditions of employment of an H-1B worker, an amended petition may be needed.

Minor changes in the conditions of employment do not require the filing of an amended petition; the employer may notify the USCIS of such minor changes when filing to extend the H-1B worker’s status.

Minor changes would include a change of the employer’s name, a change of job title with no or minimal changes in job duties, a salary increase (unless it is so substantial that a material change in job duties may be assumed by the USCIS).

An amended petition should be submitted in the following situations:

- The H-1B worker’s job duties change significantly (e.g. from postdoctoral research to college teaching).
- When a new LCA from the Department of Labor is required (such as renewal of visa)
- Changing full-time to part-time status or vice-versa.
H-4 dependents

- “H-4 dependent” refers to the spouse or children of the H-1B visa holder.
- H-4 visa holders are never allowed to work. If they can find suitable employment, then it may be possible to apply for a separate H-1B visa.
- H-4 visa holders are allowed to take classes or to enroll in degree-seeking programs at the university but may only stay enrolled as long as their visa is valid—which is dependent on the H-1B visa.
- If the H-1B visa holder’s visa expires, so does the H-4 visa holder’s visa.

Permanent Residency

H-1B visa holders may be interested in obtaining Permanent Residency or a “green card.” The university may elect to sponsor two paths to this end for H-1B visa holders who meet criteria set in university policy.

1. Labor Certification: This is an option that MSU may pursue to secure the services of qualified individuals on a permanent basis. The labor certification process involves among other things, initiating a nationally competitive recruitment procedure. For more information on Labor Certifications, refer to the HR/Affirmative Action website: http://www.montana.edu/wwwaffrm/Laborcert.html

or contact Diane Letendre, dletendre@montana.edu, 994-5326.

If the labor certification is approved, then Sally O’Neill will file the approved labor certification with the Form I-140 along with required documents. There is a charge of $750 from OIP and a charge of $580 from USCIS for this service. The green card application (Form I-485) may be filed concurrently with the I-140 petition.

1. Outstanding Researcher is an employment-based request for adjustment of status to permanent resident. This process is completed by Sally O’Neill and, if requested by the department, she will send details about what is required by the department and the worker. There is a charge of $1,500 by OIP for this service and $580 by USCIS.

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