U.S. DEPARTMENT OF LABOR

News Release

U.S. DEPARTMENT OF LABOR REVISES INTERPRETATION, ISSUES NEW GUIDANCE CLARIFYING FILING, COMPLIANCE REQUIREMENTS IN H-1B VISA PROGRAM

WASHINTON, DC – The U.S. Department of Labor's Employment and Training Administration (ETA) and Wage and Hour Division (WHD) today announced a new interpretation of their regulations and accompanying guidance in ongoing efforts to protect American jobs and ensure employers pay temporary foreign workers admitted under the H-1B visa program as the law requires.

ETA's Office of Foreign Labor Certification (OFLC) is revising its interpretation of its regulations concerning which employers of H-1B workers must file a Labor Condition Application (LCA). OFLC now interprets its regulations to require all common-law employers of H-1B workers, including any secondary employers who meet the common-law test, to file an LCA. WHD's guidance further clarifies the responsibilities of primary and secondary employers under their LCAs. This interpretation and guidance are more consistent with the H-1B statute and regulations, and are also appropriate in light of interpretative changes made by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) concerning the requirement of common-law secondary employers of H-1B workers to file nonimmigrant visa petitions.

Today's guidance comes in the form of a bulletin from ETA and a Field Assistance Bulletin (FAB) from WHD. The guidance documents will take effect in 180 days.

- ETA's bulletin explains that H-1B employment frequently involves primary employers, such as staffing agencies, that petition to hire H-1B workers, as well as secondary employers, such as staffing agencies' clients, where the H-1B workers are assigned to work. Under the interpretation announced today, when a primary employer places an H-1B worker with a secondary employer that is a common law employer of the H-1B worker, such as when a staffing agency places a software engineer with certain technology firms, the secondary employer, in addition to the primary employer, must file a petition and an LCA. As a result, some H-1B workers will have multiple LCAs and petitions concurrently.

- WHD's FAB2021-X clarifies that when a primary employer places an H-1B worker with a secondary employer that is a common law employer, both employers must comply with their respective LCAs and the corresponding H-1B program obligations. The FAB explains how these compliance principles will apply in practice with regard to the requirements enforced by WHD.

"This revised interpretation is long overdue in light of the language of the regulations, better comports with the goals of the H-1B program, and is consistent with recent Executive Branch directives," said Assistant Secretary for Employment and Training John Pallasch.

"Our work in this space continues to protect American jobs, ensures guest workers are paid the wages they have legally earned, and levels the playing field for employers using guest worker programs," said Wage and Hour Division Administrator Cheryl Stanton.

For more information about the laws enforced by WHD, call 866-4US-WAGE, or visit www.dol.gov/agencies/whd. More information about ETA is available at https://www.dol.gov/agencies/eta.

The mission of the Department of Labor is to foster, promote and develop the welfare of the wage earners, job seekers and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

Agency: Employment and Training Administration
Date: January 15, 2021
Release Number: 21-97-NAT

Contact: Eric Holland
Phone Number: 202-693-4676
Email: holland.eric.w@dol.gov
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200 Constitution Ave NW
Washington, DC 20210
1-866-4-USA-DOL
1-866-487-2365
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