

# International Student and Scholar Services

HR Tips to Recruit & Retain Global Talent  
&  
H-1B Temporary Worker Status

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# What does ISSS do?

- Central office handling immigration related matters for international faculty, scholars, and students at UNC-CH before U.S. Citizenship and Immigration Services, Department of Labor, Department of State, and other U.S. government agencies.
  - work authorization, compliance, audits
- Provides counseling related to immigration matters

# Who do we serve?

- 1391 Faculty and Scholars
  - J-1 Exchange Visitors
  - H-1B Temporary Workers
  - TN, E-3, O-1 and other
  - Immigrant petitions

# HR Tips to Recruit & Retain Global Talent

- What you do is very important and affects UNC-CH's ability to recruit and retain global talent
- Today's Topics:
  - Job posting
  - Offer letter
  - H-1B Temporary Worker Status
  - Compliance
- Please note that immigration laws and policies are subject to change

# Job Posting Basics

- Key elements to include
  1. Name of Hiring Institution and Department (i.e. UNC-CH, Department of Mathematics)
  2. Title of Position/Appointment (i.e. Assistant Professor tenure track or Research Associate)
  3. Duties of the position (i.e. teaching, research, and University service)
  4. Minimum requirements for the position/appointment (i.e. PhD in Chemistry or related field and 2 years of research experience in Chemistry)

# General Job Posting Tips

- General tip: position should not be overstated
  - Better to be succinct
- When listing the degree and field, always add “or related field”
- When creating a posting for an existing employee, make sure that the degree and field requirement matches that of the existing employee
  - Check U.S. transcript or obtain and check foreign credential evaluation for field and degree
  - Also make sure that the existing employee meets the experience requirement

## General Job Posting Tips continued

- Avoid listing preferences
- For tenure track faculty, instructor positions (and other faculty positions that involve teaching):
  - While the title might imply teaching, the fact that teaching is a duty should be clearly stated in the posting for immigration purposes
- If position has both an official and working title, make sure to include both in position summary section of posting

# Job Posting: Educational Requirements

- To qualify for H-1B classification the position must require a degree in a specific field
- A lack of clarity on the educational requirements on the job posting could result in USCIS determining that the position does not qualify for H-1B classification
- To qualify for H-1B status the selected candidate must have the degree in the field noted on the job posting



# Job Posting: Quantification of Experience

- If experience is required for the position, it is important to note how much experience is required
  - Provide months or years of employment experience required
- The prevailing wage for an H-1B case cannot be determined without knowing how much experience is minimally required for the position
- If experience can be obtained as part of applicants' graduate studies, this should be stated in the job posting

## Job Posting: Supervision and Related Language

- Words such as, supervise, mentor, manage, or oversee convey to the Department of Labor that a position involves management duties
- Indicate that a position is not entry level
- Results to a higher Prevailing Wage
- Should only be included in the posting if selected candidate is expected to supervise, mentor, manage, or oversee

# Job Posting: Travel Requirements

- When discussing the position with the PI, alert him/her that travel (domestic or international) has prevailing wage and export control implications
- PI will need to decide whether it is critical to the position
- If it is and the selected candidate is expected to travel, travel should be included in the job posting
- Or the PI can make alternate plans such as assigning travel to other employee(s)

# Offer Letters

- Make sure to add language that offer is contingent upon **work authorization**, e.g. “This offer of appointment is also contingent on documentation of employment eligibility.”
- Do not make promises as to what type of immigration case we will pursue – depends on the facts of the situation and the person’s immigration history
- Make sure to indicate a realistic start date so that the Appointing Unit and employee can plan accordingly
- For extension offers, make sure the proposed start date aligns with the expiration of their previous work authorization to ensure no gaps

# H-1B Overview

- H-1B visas are for **temporary workers** engaged in a **specialty occupation** that requires
  - Theoretical and practical application of highly **specialized knowledge** and
  - Attainment of a **bachelor's degree or higher degree** or equivalent experience, in the specific specialty for entry into the occupation
- Renewable for up to 6 years (exception applies)
- H-4 dependents can study but cannot work (exception applies)

## H-1B Overview Continued

- An H-1B employee's work authorization is strictly limited to the employer (UNC-CH appointing unit), position(s)/job title(s)/appointment(s), salary, duties and responsibilities, and work location(s) as represented to the government (DOL & USCIS)
- An H-1B employee must be paid the salary represented to the Department of Labor (DOL) and to the United States Citizenship and Immigration Services (USCIS)

# Wage Requirements

- **Required wage**
  - higher of the actual or prevailing wage
- **Actual wage**
  - Salary paid to similarly employed persons at the place of employment
- **Prevailing wage**
  - Salary paid to similarly situated employees (similar job duties, experience, education, etc.) in geographical region

# Prevailing Wage

- **Step 1** in H-1B Filing Process
- Appointing Unit & Liaison complete and submit to ISSS:
  - Prevailing Wage Information Form
  - Copy of Approved Job Posting from PeopleAdmin
  - Offer letter
  - Attestation of Compliance Form
- ISSS obtains Prevailing Wage Determination based on the above mentioned forms and documents completed and submitted by Appointing Unit and Liaison
  - All intended duties, responsibilities, appointment(s)/job title(s)/position(s), work locations must be listed fully and accurately by the Department on all forms and documents so that ISSS can obtain a valid Prevailing Wage Determination



# Actual Wage

- Appointing Unit & Liaison complete and submit to ISSS:
  - **Actual Wage Memorandum**
- Criteria that may be used to explain range of salaries:
  - Education, Job Responsibility and Duties, Experience, Publications, Skills/specialized knowledge, License/certification, Other legitimate business factors
- ISSS Keeps Memo in H-1B Public Access File & DOL audit file

# Export Control

- Certification regarding release of controlled technology or technical data to foreign persons in the U.S.
- Appointing Unit completes and submits to Export Compliance Officer: **I-129 Export Attestation Request**
- Export Compliance Officer determines whether License from Department of Commerce or the U.S. Department of State is or is not required
  - Notifies Appointing Unit via email & Appointing Unit provides print copy of email to ISSS advisor

# Labor Condition Application

- **Step 2** in H-1B filing process
- LCA completed by ISSS based on paperwork completed and submitted by Appointing Unit → accuracy & completeness essential
- LCA must list salary, ALL position(s)/job title(s)/appointment(s), and ALL work locations

# Labor Condition Application Continued

- Employer must attest (on “Attestation of Compliance” & LCA):
  - working conditions of U.S. workers will not be adversely affected
  - there is no strike or lockout
  - H-1B workers will be paid the higher of the prevailing or actual wage
  - Notice has been provided to all employees
- Must be posted by Appointing Unit/Liaison per ISSS instructions
- ISSS submits LCA to the DOL and LCA must be certified by the DOL

# I-129 (H-1B Petition)

- **Step 3** in H-1B Filing Process
- ISSS files I-129 H-1B Petition with USCIS
  - Includes certified LCA, documents from Foreign National, filing fee(s)
  - Includes Appointing Unit H-1B support letter
    - Letter should be accurate, complete, and consistent with all other paperwork submitted by Appointing Unit & Liaison to ISSS and Export Control
    - Inconsistencies will cause delays and or require starting over with Step 1 and Step 2

# Compliance after H-1B Approval

- When entering HR related actions double and triple check the salary, job title, FTE (must be 100%), worksites, to make sure everything is accurate
- Ensure that everything is in place so H-1B employee can start working when they present themselves for work and are placed on payroll
  - all HR actions complete, background check is complete, PID created, etc...

# Compliance after H-1B Approval

- Must start payroll when H-1B “enters into employment”, i.e. when he/she first makes him/herself available for work or comes under control of employer but no later than:
  - 30 days after entering the US or:
  - If in the US, 60 days after start date on petition or change of status by USCIS, whichever later

# Compliance while H-1B employee is working at your Department

- Create and maintain list of H-1B employees
- Ensure that H-1B worker receive a paycheck ***every pay period for the “required” wage rate for the length of the petition***
  - H-1B workers must receive a paycheck ***every pay period for the “required” wage rate for the length of the petition***, unless the H-1B petition and LCA are withdrawn.
  - No unpaid status/leave without pay



# Compliance

- Changes: remember, the H-1B is **employer, job, salary, and location specific**
  - Report **any** changes to ISSS **before** they go into effect → New PWD, LCA, and I-129 might be required
  - Do not approve any changes or additions to the position or H-1B employee's responsibilities without ISSS approval
  - Reducing FTE is **NOT** permitted: must remain full-time, 40 hours, & 100% FTE for duration of H-1B

# Compliance

- Terminating H-1B Employees
  - Employer must offer to pay principal's transportation costs to home country (preferably in writing at time of termination)
  - Notify ISSS immediately because UNC –CH Appointing Unit can be held liable to continue to pay wages until ISSS sends a withdrawal letter to USCIS and withdraws the LCA

# Penalties

- **Failure to make accurate representations to the DOL and USCIS** on H-1B related documentation such as the LCA and **failure to comply with the terms and conditions of the H-1B petition** places the University at significant risk
- A few examples of **penalties** that the University can face **for noncompliance** are civil monetary penalties ranging from \$1000 to \$35,000 per infraction to a multiple year bar on filing H-1B and permanent residence petitions, which would of course be catastrophic to our institution
- Criminal penalties

# Hypothetical 1

John Brilliant

- a. Approve the request. He has an approved H-1B and can work wherever he wants.
- b. Deny his request. His H-1B only allows him to hold the appointment as Assistant Professor of Statistics.
- c. Put the request on hold and call ISSS to discuss the matter.

## Hypo 2

Jane Smart

- a. Nothing, this has nothing to do with Jane Smart's H-1B.
- b. Contact ISSS and notify them of the change of locations because you know that it will affect the salary and/or you will be required to post the LCA per ISSS instructions.
- c. Talk to the supervisor and decide among yourselves how to handle it.

# Hypo 3

Joe Genius

- a. You decide to just wait until he arrives, you will have plenty of time to do his background check when he gets here.
- b. You immediately send him the background check application so that his background check will be completed before he arrives.
- c. You send him the background check application but tell him to complete only once he gets to the U.S.

# Hypo 4

Joanna Dazzling

- a. Approve the request. This raise is very small and not a big a deal.
- b. Hold off on approving the request and contact ISSSS.
- c. Approve the request after you have verified that the supervisor has given all of her employees a \$1000 raise.

# Hypo 5

Jim Braniac

- a. Approve it as soon as possible. Hawaii sounds like a great place and Jim will need to book flight as soon as possible.
- b. Hold off on approving the request and contact ISSS.
- c. Approve the request and call UNC payroll to ask about the stipend Jim would be paid while on leave.



# H-1B or Immigrant Petition Questions?

- Contact:
  - Ioana Costant, Assistant Director
    - [costant@unc.edu](mailto:costant@unc.edu)
  - Debbie Rad, International Scholar Adviser
    - [rad@email.unc.edu](mailto:rad@email.unc.edu)
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# International Student and Scholar Services

- 2004 FedEx Global Education Center - CB 5240  
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<http://global.unc.edu/iss>

<http://iss.unc.edu/staff/>