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)*

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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 the 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 deal.
ob. Hold off on approving the request and contact ISSSSS.
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:
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http://global.unc.edu/isss
http://isss.unc.edu/staff/