

BASIC INFORMATION CONCERNING H-1B IMMIGRATION STATUS **related to University of Tennessee, Knoxville employees**

H-1B, or **Temporary Worker**, nonimmigrant status may be granted to a non-U.S. resident who has been offered a professional-level position in the United States. In order for a person to obtain H-1B status, the prospective employer must file a petition with the U.S. Department of Homeland Security/ U.S. Citizenship and Immigration Services (CIS) [formerly INS]. The UTK Center for International Education files all official H-1B requests for The University of Tennessee, Knoxville, after receiving a formal request from the hiring department. **It is very important for the Department Head to understand the U.S. laws and regulations related to an H-1B status before submitting an H-1B Request to the UTK Center for International Education.**

General Information

H-1B or Temporary Worker status is appropriate when a non-U.S. resident is employed in a professional position by The University of Tennessee, Knoxville. (Note: although the permission to stay in the U.S. and employment authorization granted by CIS to a person with H-1B status is temporary, the actual position filled by the employee may be a permanent one.)

In some cases, J-1 (Visiting Scholar) or O-1 (person of Outstanding Ability) status may be used instead of H-1B. It may also be possible to employ a nonimmigrant who has employment authorization, usually documented by a laminated Employment Authorization Document. (Example: F-1 students with practical training authorization). The University of Tennessee may **not** employ a person who is not a U.S. citizen or Legal Permanent Resident and does not have work authorization.

Requesting an H-1B Petition

Before a person may be granted H-1B status, the employer must file a petition with CIS. In filing this petition, the employer certifies its commitment to employ the person in a specific job and to pay a stated salary. For UTK employees, the Center for International Education (CIE) will complete the H-1B petition and submit it to CIS. There are, however, a number of requirements which must be fulfilled before this petition can be filed. The process begins in the hiring department, which is responsible for completing an H-1B Request form, gathering other necessary materials, and submitting them to CIE and Human Resources. (See Yellow Sheets for detailed instructions). The request form must be signed by the Department Head and (if relevant) College Dean. **It is important to have a clear understanding of the requirements and liabilities related to an H-1B petition before signing a request form;** information concerning these requirements is given below. If there are any questions or concerns about H-1B status, the financial commitment involved for the department, or the application procedure, please contact the Center for International Education (974-3177) before submitting the request form. Currently, it takes about one month for CIE to prepare and submit an H-1B petition for CIS, from the time that all materials are received by CIE; if we encounter any problems, processing will be delayed. Because of the many steps involved, the entire H-1B application process can take up to one year. Please see attached gold-colored chart ["How Long Does It Take to Process an H-B Application?"] for more detailed information about processing times.

Specific Requirements for H-1B Employment

Before an H-1B petition can be filed, the Center for International Education must file a "Labor Condition Application" (LCA) with the U.S. Department of Labor (DOL). In the LCA, the employer must make the following four attestations:

1. The H-1B employee will be paid the "actual wage" for the place of employment (e.g.UTK) or the "prevailing wage" for the geographic area, whichever is greater.
2. The employment of an H-1B worker will not "adversely affect" the working conditions of other, similarly employed persons at the place of employment.
3. There is no current strike or lockout at the place of employment.
4. A notice of the filing of the LCA has been posted in at least two conspicuous locations at the place of employment.

Although no documentation needs to be filed with the LCA itself, the employer is required to maintain a file of substantial, detailed, documentation; this documentation must be available for inspection by any interested party. The required documentation will be kept in the Center for International Education.

Interpreting such terms as "actual wage", "prevailing wage", and "adversely affected" has been complicated by various interpretations by DOL. The university's current interpretation is as follows:

The employee will be considered to be making the "actual wage" if he/she will receive at least as much as other similarly employed and similarly qualified employees in the same department. If others are not all paid exactly the same amount, the salary of the H-1 worker must be within the range of the others. (See separate sheet of information about the actual wage requirement.)

The "prevailing wage" will be the average wages of persons similarly employed in the same geographic area, as determined by the Tennessee Department of Labor and the U.S. Department of Labor. [Note: DOL law allows the use of other, reliable, wage surveys, if available, in place of a prevailing wage determination by the State Employment Security Agency (SESA). UTK, however, will use the SESA figures in most, or all, cases.] ***If it is discovered that the H-1B employee will not be paid at least the "actual wage" or "prevailing wage", The University will not be able to file an LCA or an H-1B petition, and therefore, the person may not be employed.**

U.S. law also requires that the H-1B employee be given the same benefits as U.S. persons employed in the same position, in accordance with the normal policies of the employer. **IMPORTANT:** UT policy states that "regular" employees" are eligible for all employee benefits. Furthermore, a person who will be employed for one year or longer must be a regular employee. **Because most H-1B employees will be employed for more than one year, they must normally be employed as regular employees and must receive full employee benefits.** In some unusual situations, if the entire period of employment is expected to be less than one year, UT will file an H-1B petition for a term position. However, this position may not be extended beyond one year.

Because the petition, the LCA and the back-up documentation must give the employee's exact position title, salary, job description and work location, it is **VITALLY IMPORTANT** that the information provided with the H-1B request be **complete and accurate**. The Center for International Education will be attesting under penalty of perjury that the information provided is correct. Submitting inaccurate information with either an LCA or an H-1B petition can result in severe penalties for the employer and/or serious legal problems for the employee.. Although it appears that a salary increase would not violate the H-1B regulations, **UT may NOT make any other substantial change in the employee's duties, dates of employment, title, salary, or location of employment until we have filed a new H-1B petition.**

IMPORTANT: Once an employee has obtained H-1B status, based on a petition filed by UT, The University must normally pay the stated wage for the duration of the H-1B petition, even if the employee is not actually working. In addition, an H-1B employee who is not working may lose his/her legal status in the U.S. and become subject to deportation. For this reason, it is absolutely essential that funding is secured for the period of time requested in the petition and that both employer and employee agree on the dates of employment to be requested in the petition. **If employment is terminated before that date for any reason, the hiring department must report this to CIE immediately, and CIE must inform CIS. Until this report is made, UT may be responsible for paying the stated salary, even if the employee is no longer working.**

U.S. immigration law also requires the employer to be responsible for the employee's return travel expenses to his/her home country if employment is terminated before the end of the H-1B petition period. This expense would be the responsibility of the hiring department. For these reasons, we suggest that a department request an H-1B petition only for the period of time for which funding is reasonably secure. If continued funding is obtained, then the university may request an extension of the H-1B status. If there are concerns about making this commitment, please discuss with the Center for International Education before requesting an H-1B petition.

Part-time Employment

Most H-1B employees are employed full time. However, an H-1B employee may be employed part-time if the H-1B paperwork, filed with the U.S. Department of Labor and CIS states that the employment will be part-time. The application must state the number of hours per week the employee will be employed (this may be stated as a range of hours), and the actual employment must remain within the stated range of hours. **IMPORTANT: The hiring department must keep a daily record of the actual hours worked by each part-time H-1B employee, and must submit this record to the UT Human Resources Office. Part-time H-1B employees, even "exempt" employees may NOT work more than the hours stated on the daily work record.**

Time Limit

The maximum period of time for a person to hold H-1B status is **six years**. This includes time spent with previous employers, unless the person has been outside the U.S. for one year before coming to UTK. There is no minimum period of time for an H-1B petition. If the employee has a pending application for permanent residence, the H-1B status may sometimes be extended beyond the normal six year-limit. Contact CIE for more details on this exception.

Documentation

Before an H-1B employee may be employed, the following documentation is required (unless the employee has some other status which permits employment):

1. CIS approval of a petition for a specific position at UTK. (I-797); a petition approval for another employer or a different UT position is not valid
2. I-94 showing valid, unexpired, H-1B status.

Exception: If the employee held H-1B status with another employer, then he/she may begin working at UTK after a UTK petition is received by CIS, and after UTK has received the paper CIS receipt for this petition. Please consult CIE for more information about this provision.

Additional Employment

CIS approval of a petition from UTK authorizes **ONLY** employment by UT. If the employee wishes to accept employment, ***or receive an honorarium*** from another institution, the other employer must file a petition with CIS. This includes consulting or free-lance work performed as an independent contractor.

Please feel free to contact Wendy Syer or Lee Rhea in the UT Center for International Education (974-3177) if you have any questions about H-1B regulations, UT policies related to an H-1B petition, or the petition process. Please see separate yellow "Instructions for Requesting an H-1B Petition" for detailed information about the H-1B application process.