

# H-1B Temporary Workers Handbook

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## H-1B Status

H-1B status is used at the University of Denver to temporarily employ non-immigrants in faculty, staff, and post-doctoral positions. United States Citizenship and Immigration Services (USCIS) limits the H-1B visa to use in "specialty occupations" that require the theoretical and practical application of a body of highly specialized knowledge.

### Eligibility for H-1B Category

Non-immigrant candidates for a position at DU may be considered for employment in the H-1B category at the University under the following conditions:

- The appointment will be long-term or possibly permanent.
- The position requires at least a Bachelor's degree in a specific specialty.
- The candidate holds at least a Bachelor's degree or the foreign equivalent in a relevant field.
- J-1 exchange visitor status is disadvantageous or not appropriate.
- The candidate is not subject to the J-1 2-Year Home Residency requirement.
- The department will pay at least the prevailing wage determined by the State Workforce Agency (SWA).

*\* All non-immigrants with regular tenure-track faculty appointments must eventually obtain U.S. permanent residency status.*

### Filing an H-1B Petition

Departments may work with International Student and Scholar Services (ISSS) to file an H-1B petition on a candidate's behalf. If you file the petition through ISSS, the only fees required are the USCIS filing fee (\$325) and an additional fraud detection and prevention fee (\$500) for new H-1B employment at the University.

Most H-1B petitions will be processed by ISSS unless there are exceptional circumstances that warrant retaining outside legal counsel. Using an immigration attorney to file an H-1B petition can cost between \$1500 and \$3500 per application. Legal fees are the responsibility of the hiring department and should not be passed on to the candidate.

### **Department Responsibilities**

By agreeing to sponsor a non-immigrant for H-1B status at the University, a department assumes the following responsibilities:

- Pay the higher of the actual wage or the prevailing wage.
- Post the Labor Condition Application (LCA).
- Pay the relevant USCIS filing fees.
- Track the number of hours the employees works each day and each week for part-time employees.
- Provide the employee return transportation if the H-1B employment is terminated prior to the expiration of the H-1B status.
- Notify ISSS if the employee leaves prior to the expiration of the H-1B status.
- Notify ISSS when there are substantive changes to the position, such as change in job duties or location of employment.

### **Application Process**

Applicants for H-1B status may not begin employment at the University while the petition is in process, except in the case of Extension of Status or Portability petitions. The employee may not be placed on payroll until the H-1B petition has been approved. United States Citizenship and Immigration Services (USCIS) estimates the average processing time to be 30 - 120 days.

### **Request for Filing an H-1B Petition**

To begin the H-1B petition process, the department must submit the following documents to International Student and Scholar Services (ISSS):

- H-1B Request Form
- H-1B Memo

- Copy of the job announcement or advertisement
- Actual Wage Form
- All documents requested from the current/prospective employee

## **Application Overview**

### **Step 1 - Determining the Prevailing Wage**

#### ***Avg. time to completion: 1 - 15 days***

Using information provided by the department, ISSS requests a prevailing wage determination from the Colorado State Workforce Agency (SWA). The prevailing wage is the current rate for employees in similar positions in the same geographical area. In determining the prevailing wage, the actual wage must also be determined. The actual wage is the amount the department is currently paying other employees with an equivalent title, job responsibilities, and experience. The wage offered to the prospective employee must be the higher of the prevailing wage or the actual wage.

If the wage offered to the employee is lower than the prevailing wage, the department has three options:

- Increase the wage to meet the prevailing wage
- Withdraw the offer of employment
- Request a wage survey

A wage survey uses an alternate source of wage data to determine the prevailing wage. These data are provided by outside organizations for a fee. The results of the prevailing wage from the wage survey are not guaranteed to be lower than the state-determined rate. In the case of an investigation by the Department of Labor, this wage may be challenged.

### **Step 2 - Posting the Labor Condition Application (LCA)**

#### ***Avg. time to completion: 1 day to file, 10 days to post***

The Labor Condition Application (LCA) is an application to the U.S. Department of Labor (DOL) in which the University agrees to several conditions regarding wage, working conditions and notification of filing. If the LCA is certified by the DOL, Form I-129 may be filed. If the LCA is denied, any errors must be corrected and the application resubmitted for evaluation.

The department must post copies of the LCA in two prominent locations for ten consecutive business days, then return them to ISSS. Our office will forward the required forms for posting the LCA to the department. The posting is not to solicit additional applications for the position, but instead to give public notice of the department's intention to hire a foreign employee, giving aggrieved parties an opportunity to respond.

### **Step 3 - Submitting Form I-129 (Petition for a Non-Immigrant Worker)**

***Avg. time to completion: 30 - 120 days***

Once the LCA has been approved and posted, Form I-129 may be filed with USCIS. Form I-129 requests permission for the University to hire or extend the H-1B status of an employee. The department must pay the application fee (\$320) to USCIS by entering a transaction in Banner (Vendor ID: DHS). When entering the transaction, choose the California location for DHS, indicate an enclosure, and forward the Direct Pay Cover Sheet to ISSS. For new H-1B employment at the University, the department must also pay an additional fee (\$500) for a fraud detection and prevention check. This fee is paid separately from the filing fee for Form I-129.

#### **Notification of USCIS Action**

USCIS will notify ISSS directly regarding the status of H-1B petitions. If the petition is approved, USCIS will send Form I-797, Notice of Action, to us. We will then notify you that the approval notice is ready to be picked up. We strongly recommend collecting the approval notice in person, rather than using campus mail, in order to avoid losing the document.

If USCIS requires additional information to adjudicate the petition, they will send an RFE (Request for Further Evidence) to ISSS outlining the information needed before a decision can be made. RFE's are sent for a number of reasons, including missing documents, unclear or vaguely worded job descriptions, and questions about the applicant's lawful immigrant status in the United States. A decision is generally received within 30 - 60 days of responding to the RFE.

### **Commencing H-1B Employment**

Once Form I-797, Notice of Approval, has been received, a non-immigrant employee may begin work at the University. Depending on where the employee is currently located, additional action may be required before H-1B status has been acquired.

In addition to the standard I-9 hiring and verification process, a new H-1B employee must also make an appointment to meet with Laura Buhs, International Scholar Advisor, prior to beginning employment. To make an appointment, please email Laura at [lbuhs@du.edu](mailto:lbuhs@du.edu).

#### **Initial Employment for Employee in the United States**

Once ISSS has received the approval notice for an employee, the University may lawfully employ him or her. We will notify both the department and the employee that the petition has been approved and a new I-94 card has been received. The I-94 card establishes the employee's legal presence in H-1B status in the United States and must be collected. The approval notice will be provided to the employee to document that he or she is in H-1B status and eligible to work for DU.

#### **Initial Employment for Employee outside the United States**

Once the H-1B petition has been approved, USCIS will send an approval notice to ISSS and notify the U.S. embassy or consular office designated in the petition. The department must collect the approval notice from ISSS and forward it to the employee. The employee must apply for an H-1B entry visa, and if granted, enter the United States in H-1B status. For more information about applying for entry visas, please visit the [Department of State's travel website](#).

### **Extension of Current Employment at DU**

Once the H-1B petition has been approved, USCIS will send an approval notice to ISSS. We will notify both the department and the employee that the approval notice has been received and is ready to pick up. The employee does not need to meet with an advisor prior to commencing the new period of employment in H-1B status.

## **Restrictions and Portability of H-1B Employment**

### **Maximum Validity**

H-1B status is limited to a maximum total duration of six years. H-1B status is available in increments of up to three years. The position is governed by the duration, rate of pay, worksite, and title listed in the Labor Condition Application (LCA). H-1B employees do not have a grace period following the termination of employment. Valid status ends on the end date listed in the approved H-1B petition, or when the employee is no longer employed in an H-1B position.

### **Dual Intent**

Although H-1B status is designed to temporarily employ professionals, it carries a provision for dual intent, which allows an employee to work while intending to become a U.S. permanent resident. Obtain permanent residency is a lengthy process; acquiring H-1B status is therefore normally recommended to initial employees who have been offered a tenure-track position while permanent residency is sought. In some cases, other non-immigrant visa status may be appropriate for employment at the University.

### **Part-Time Employment**

The University may file a petition to hire an H-1B employee part-time. The request for part-time employment must be specified in the initial petition, and the University is obligated to track the number of hours the employee works each day and each week. The department is responsible for monitoring the employee's hours while employed at DU.

### **Portability**

H-1B regulations permit an employer to place an employee who currently holds or who has held H-1B status on payroll once USCIS has received form I-129. However, this provision does not guarantee that the petition will be approved. If the petition is denied, the employee must stop working when notice of denial is received.

## Dependents

If the employee is already in the United States and is filing for a change of status to H-1B or is requesting an extension of current H-1B status, his or her dependents must also petition to change to H-4 dependent status. Dependents are defined as a spouse or an unmarried minor child under the age of 21. Dependents who currently hold another non-immigrant status independent of the employee, or who are eligible to hold another non-immigrant status, do not need to file for a change to H-4 status.

### Applying for a Change of Status

To change a dependent's status, ISSS must submit [Form I-539](#), Application to Extend/Change Non-Immigrant Status, to USCIS with the employee's H-1B petition. The employee or dependent should complete Form I-539 and submit it to ISSS. The employee must pay the USCIS filing fee for each change of status petition submitted (\$300) for his or her dependents. If the dependents are not currently in the United States, they must apply for an H-4 entry visa at a U.S. embassy or consulate prior to entering the country.

### Dependents Studying in the United States

Children of H-1B employees working at DU may attend public school or enroll in university courses while holding valid H-4 status. However, once the child reaches the age of 21, he or she must acquire another non-immigrant status to continue studying in the United States. If the child is attending DU, he or she should meet with an international student advisor to discuss which immigration status would be appropriate to change to in order to remain in the country. If the child is enrolled at another school or university, he or she should meet with an international student advisor there to discuss the change of status process.

## Travel

H-1B employees may leave the United States and re-enter at any time during their employment, provided they have maintained their immigration status and present the appropriate documents at the Port of Entry.

### Documentation for Port of Entry

When re-entering the United States, the employee should have the following documents:

- Valid passport
- Valid H-1B visa, unless otherwise exempt
- Original Form I-797 Notice of Approval

A valid H-1B visa is not required when re-entering the United States from Canada or Mexico after a trip of 30 days or less.

## **Visa Renewal**

If the employee's visa has expired, he or she must apply for a new one at a U.S. embassy or consular office outside the United States. The employee does not need to apply for a new visa when re-entering the United States from Canada or Mexico after a trip of 30 days or less, provided they have not applied for a new visa abroad and are not nationals of countries designated as [state sponsors of terrorism](#) by the Department of State. After traveling to Mexico or Canada, the entry visa is automatically revalidated by immigration officials at the Port of Entry.