



## Ohio Administrative Code Rule 3364-25-60 H-1B employer compliance.

Effective: May 31, 2018

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### (A) Policy statement

As the "petitioner", the university of Toledo "UT" must strictly adhere to all federal regulations governing employment based H-1B petitions I-129 petitions for nonimmigrant worker. Rules and regulations are mandated by the U.S. department of labor "DOL," department of homeland security, "DHS," department of state "DOS," and U.S. citizenship and immigration services "USCIS."

This policy summarizes the key obligations that UT must adhere to when sponsoring an H-1B petition. Each H-1B petition shall have a designated point-of-hire/hiring department "POH" who is accountable to ensure compliance under this policy in addition to any and all federal regulations.

### (B) Purpose of policy

To ensure that the university maintains compliance under federal immigration regulations and to define the POH's role in the H-1B sponsorship process.

### (C) Scope

This policy applies to any UT employee involved in the hiring and sponsoring of a foreign national under the university's H-1B program. Employees include but are not limited to departmental administrators, supervisors, business managers, principle investigators, HRTD consultants, department chairs, and deans.

### (D) Procedure

(1) H-1B sponsorship: The university of Toledo routinely sponsors H-1B petitions on behalf of eligible foreign national employees for certain faculty, research, and non-faculty staff positions that qualify as "specialty occupations."



(a) Office of international student and scholar services "OISSS" shall be the designated office to file correspondence with DOL and USCIS on behalf of the petitioner (UT);

(b) OISSS shall have final authority to determine if the proffered position qualifies as a specialty occupation;

(c) Private retention of outside immigration counsel is not permissible.

(2) University positions typically eligible for H-1B sponsorship at UT (this list is not exhaustive):

(a) Full-time faculty (academic and clinical) positions (e.g., professor, assistant/associate professor);

(b) Full-time non-faculty teaching positions (e.g., lecturer, visiting assistant professor);

(c) Full-time non-faculty research positions (e.g., researcher, research associate, research scientist, research assistant professor, research engineer, postdoctoral research associate/fellow);

(d) Full-time non-faculty staff positions that qualify as a "specialty occupation."

OISSS can never guarantee the approval of any H-1B petition; USCIS has final authority to grant or deny any petition. The POH shall never promise sponsorship to a prospective employee or guarantee success of an H-1B petition.

(3) University positions that are not eligible for H-1B sponsorship at UT:

(a) Student employment positions;

(b) Intermittent/call-in status positions (where the POH cannot guarantee a minimum number of hours per week that the prospective employee will be compensated);

(c) Any position that does not qualify as a "specialty occupation";



(d) Any position that does not meet the "required wage."

(4) Medical residents/fellows

The POH shall reference and maintain accordance with policy number 3364-86-004-00.

(5) Part-time positions and H-1B sponsorship:

An H-1B may be sponsored for part-time positions that qualify as "specialty occupations" at OISSS's discretion. This type of sponsorship places an additional burden on the POH to track hours, in addition to other regulations the university must follow in order to remain compliant with federal law:

(a) DOL requires employers to keep records of hours worked each day and each week for all part-time H-1B employees. These records must be maintained by the POH and may be requested by OISSS or DOL at any time;

(b) Part-time workers must be paid for at least the number of hours indicated on form I-129 (H-1B petition).

(6) Fees: the POH is obligated to pay any and all required fees associated with filing an H-1B petition. The POH may not charge any amount back to the foreign national employee nor can the employee's wage be temporarily reduced to cover the fees associated with his/her H-1B petition.

Premium processing service is an optional fee. The POH must consult OISSS in regards to payment of this fee.

(7) Finite time period: H-1B status is subject to a six year limit; up to three years may be requested at a time. Few exceptions may exist to extend beyond the six year limit.

(a) If an extension of H-1B status is desired, the POH must notify OISSS six months prior to the expiration to avoid a gap in employment.



(b) If the POH has intentions to keep an employee beyond six years, the POH is responsible for contacting OISSS no later than the end of their fourth year in H-1B status to discuss potential options for permanent residency.

(8) Export control: The POH and/or principle investigator is responsible for adhering to any and all federal export control policies and procedures managed by the office of research and sponsored programs.

(9) H-1B required wage obligations: The DOL mandates wage requirements for the entire duration of H-1B employment. The POH must communicate with OISSS with regard to realistic start and end dates, taking into consideration the varying processing times and the ability to compensate the position for the entire approval period.

"Required wage" is defined as the rate of pay which is the higher of:

(a) The actual wage (the wage rate paid by the employer to all individuals with experience and qualifications similar to the H-1B nonimmigrant's experience and qualifications for the specific employment in question at the place of employment); or

(b) The prevailing wage rate (determined as of the time of filing the labor condition application "LCA") for the occupation in which the H-1B nonimmigrant is to be employed in the geographic area of intended employment.

(c) The university's obligation to pay the "required wage" to the H-1B worker begins upon the approved H-1B start date where the worker makes him/herself available for work, regardless of any employer-related conditions that may prevent the employee from beginning work. However, compensation shall never begin later than thirty days after the H-1B worker enters the U.S. to take the job or, where the worker is already in the U.S., sixty days after the H-1B worker is authorized to work for the employer.

For the purpose of this policy, "employer-related conditions" include but are not limited to:

Lack of assigned work, lack of a permit or studying for a licensing exam, short-term furlough, pre-



employment hiring requirements related to drug-testing, background checks, orientation, etc., and the lack of or pending social security number.

(d) The POH guarantees at the time of hire that the H-1B employee will be paid the "required wage" for the entire duration of H-1B status as requested. If any changes are to be made to salary and/or benefits package, the POH must notify OISSS prior to any change going into effect.

(e) The "required wage" must be paid in pro-rata installments.

(f) The university must pay the "required wage" when the employee is placed in a nonproductive status due to employer-related conditions.

(g) The university is not obligated to pay the "required wage" when the H-1B worker experiences a period of nonproductive status due to conditions unrelated to employment which take the worker away from his/her duties at his/her voluntary request and convenience (e.g. touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (e.g., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), provided that such period is not subject to payment under the employer's benefit plan or other statuses such as the Family Medical Leave Act (FMLA) or the Americans with Disabilities Act.

(h) The POH must inform OISSS prior to placing the employee in non-productive status to ensure compliance with the DOL regulations.

(i) The university's obligation to pay the "required wage" does not cease until there has been a bona fide termination of the employment relationship.

For the purposes of this policy, "bona fide termination" does not occur until OISSS notifies USCIS of the termination. HR termination of the employment relationship does not end the university's obligation to pay an H-1B employee the "required wage".

(j) The POH is responsible for notifying OISSS immediately upon the termination of an H-1B worker (whether it is voluntary employee resignation or employer termination). A thirty day notice should be provided, when possible.



(k) In the event that the university terminates the employment relationship prior to the end of the employee's authorized period of stay, the university will be liable to pay for the reasonable costs of return transportation to the employee's home country. There is no liability where the employee voluntarily resigns.

(10) Material "substantial" changes to position: An H-1B employee is only permitted to work under the original terms of employment approved by DOL and USCIS. The POH must notify OISSS of any desired changes to the terms of employment prior to that change going into effect, including but not limited to changes to job title, job requirements or duties, hours to be worked, salary, and work location (worksite or building).

OISSS shall have final authority to determine whether the changes are deemed "material", thus requiring the filing of an amended H-1B petition with USCIS.

(11) Fines/penalties/sanctions: Failure to comply with any and all DOL and USCIS mandated regulations can result in substantial criminal and/or civil penalties for the responsible stakeholder (POH), the foreign national employee, and the university as a whole. Civil sanctions may include but are not limited to fines in the amount of one thousand dollars, five thousand dollars, thirty-five thousand dollars, back wages with compound interest, debarment of the university from participating in the H-1B program in the future. Additional penalties or sanctions may exist.

(12) Citations:

8 C.F.R. 214.2(h)

20 C.F.R. Part 655, Subpart H