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| LAW CORPORATION

Labor Condition Application (LCA) Handbook

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Introduction

Our Labor Condition Application (“LCA”) Handbook provides a comprehensive explanation of the LCA and Public Access File procedures for employing H-1B, H-1B1 and E-3 status nonimmigrant workers. These three classifications allow U.S. employers to hire foreign workers in nonimmigrant (temporary) status to fill vacancies in “specialty occupations”, which are occupations that normally require a Bachelor-level degree or higher in a specific field of study.

H-1B1 and E-3 statuses are based on bilateral treaties with certain countries. H-1B1 status may be granted only to workers who are nationals of either Chile or Singapore, and E-3 status is available only to nationals of Australia.

Please note that the terms “H-1B Dependency” and “Willful Violators”, explained below, apply only to the employment of H-1B workers, and not to the employment of H-1B1 or E-3 workers. Where employment requirements apply to all three classifications, we use the term “covered workers” as shorthand for “workers in H-1B, H-1B1 or E-3 status.” Where the requirements apply only to the employment of H-1B workers, we refer to “H-1B workers.”

While this handbook provides a detailed explanation of the LCA and Public Access File procedures and requirements, it is not a substitute for legal advice. Therefore, if you have any questions regarding the contents of this Handbook, or specific questions concerning the employment of foreign nationals, please contact our office.

Please note an electronic version of this handbook may be found at:

www.mgplc.com/Handbook/LCA_Handbook_Jan_2011.pdf

Part A: Labor Condition Application Guidelines

Before filing an H-1B, H-1B1 or E-3 petition or visa application, an employer must file a Labor Condition Application (“LCA”) with the Department of Labor (“DOL”). The LCA requires a number of attestations from the employer to the effect that the jobs and working conditions of U.S. workers are not threatened by that employer’s hiring of the foreign worker.

Please review the relevant guidelines below, as well as Part B of this Handbook, entitled “Public Access File and Retention of Related Documents”, to assist your understanding of these requirements. Should you have any questions, please feel free to contact our office.

1. FOUR BASIC LCA EMPLOYER ATTESTATIONS

For most employers¹, completing and filing an LCA with the DOL involves making four separate attestations pursuant to the relevant provisions of the Immigration and Nationality Act. By signing the LCA, the employer agrees to:

- (i) Pay covered workers the “required wage” (The “required wage” is the “actual” or the “prevailing” wage, whichever is the higher, for workers in comparable positions in the area of intended employment;
- (ii) Provide covered workers with the working conditions enjoyed by other workers in that position;
- (iii) Not employ covered workers when there is a strike or lockout of U.S. employees in the same occupation and same geographical area; and
- (iv) Provide notice by posting copies in conspicuous locations at the place of employment, or by providing union representative a copy of the filing (where applicable).

Each of these attestation obligations is discussed in further detail below.

A. Required Wage

Employers seeking to employ covered workers must attest in the LCA that they will pay those workers the “required wage” throughout the duration of their employment. The definition of “required wage” has three components: (i) the “actual wage”, which is the wage paid to similarly-situated local employees of a company; (ii) the “prevailing wage”, which is the weighted average of wages offered for the occupational classification for the area of intended employment; and (iii) benefits payments incumbent on the employer.

Employers must pay covered workers the actual wage or the prevailing wage, whichever is the greater, and must offer benefits to these workers on the same basis and on the same criteria on which they offer benefits to U.S. workers.

¹ Additional attestations apply for companies found to be “H-1B dependent” or “willful violators”. Please see Section 5 for a discussion of those requirements.

i. Actual Wage

The actual wage is the wage paid by the employer to employees with duties, experience and qualifications similar to that of the covered worker. In determining the actual wage, the following factors may be considered: experience, qualifications, education, job responsibility and function, specialized knowledge and “other legitimate business factors.” Where there are other employees with substantially similar experience and qualifications in the specific employment in question – that is, they have substantially the same duties and responsibilities as the covered worker – the actual wage shall be the amount paid to those other employees. If no such other employees exist at the place of employment, the actual wage shall be the wage paid to the covered worker by the employer.

ii. Prevailing Wage

The prevailing wage is the typical wage in a geographical area paid to U.S. workers in an area of employment. The employer is obliged to estimate the amount of that typical wage on the basis of the best information available at the time of filing an application. The “area of employment” is the area within normal commuting distance of the place of employment. The prevailing wage figure may be obtained from government survey data or from the data of an independent survey that meets several DOL requirements, or from the prevailing wage determination of DOL.

iii. Benefits

By signing the LCA, the employer agrees to offer the covered worker benefits – e.g. cash bonuses, stock options, paid vacations and holidays, health/life/disability and other insurance plans or retirement and savings plans – on the same basis that the employer offers such benefits to U.S. workers. The employer may not impose stricter eligibility or participation requirements on covered workers than that employer imposes on U.S. workers in similar employment.

Employees of multinational companies who are in the U.S. as covered workers for no longer than 90 days may be offered benefits retrievable in their home countries. If such workers remain in the United States for longer than ninety days, the employer may continue to offer home country benefits (instead of U.S. benefits), provided that:

- The company provides reciprocal benefits to its U.S. workers employed abroad;
- The covered worker is in continuous employment abroad and enjoys benefits comparable to those of the company’s United States based employees; and
- The H-1B covered worker who has been in the United States for over ninety days can choose to receive the benefits that are offered to U.S. workers in the United States.

B. Working Conditions

The employer who signs the LCA attests that the employment of an H-1B worker will not adversely affect the conditions of U.S. workers in the area of employment in which that employer intends to place the H-1B worker. This requirement is satisfied if the employer affords the same working conditions to covered workers as those enjoyed by U.S. workers, and if those working conditions are not adversely altered as a consequence of the employment of the H-1B worker.

“Working conditions” include working hours, shifts, vacation benefits and seniority-based preferences for training programs and work schedules. The employer’s obligation regarding working conditions extends

across the validity period of the certified LCA, or across the period during which the covered worker is employed, whichever period is the longer.

C. Strikes and Lockouts

By signing the LCA, the employer attests that a strike or lockout resulting from a labor dispute is not in progress at the place of work or in the occupational classification in which the employer proposes to employ a covered worker.

D. Notice

By signing the LCA, the employer undertakes to provide notice of the filing of the LCA by giving a copy of it to the company's union bargaining representative. Where there is no bargaining representative, the employer undertakes an obligation to electronically notify existing employees of the filing, or to display for ten business days copies of the LCA (or a notice that contains certain specified information about the LCA) in two conspicuous positions at the place of work. The employer undertakes also to provide the covered worker on whose behalf the LCA was filed with a copy of the certified LCA no later than on the day that worker first reports for work.

2. SHORT TERM PLACEMENT OF COVERED WORKERS AT SITES NOT LISTED ON THE LCA ("ROVING EMPLOYEES")

The DOL regulations impose several restrictions on placing covered workers at worksites other than at the location or locations specified in the LCA. Where a covered worker is placed at a location that is not a "worksite", special rules apply as to how long the employee may remain in that location. Please note that the requirements in this section are fairly complex. We encourage you to contact our office should you have questions or need further assistance in understanding them.

A. Definition of "Worksite"

The term "worksite" is defined as the "physical location where the work is actually performed." Two types of locations are specifically excluded from this definition: locations for employee-development activities (*e.g.* formal training seminars, staff seminars, etc.); and locations where workers' short-term presence is necessitated by either "peripatetic" job functions (requiring frequent travel), or job functions requiring "occasional" short-term travel.

B. "Non-Worksite" Temporary Placement

If activities performed at an offsite location fall under the "developmental activities" or "job function" exceptions, the employer is not required to file a new LCA for the location or to comply with the other rules regarding offsite employment. In the case of a placement based on "job functions," however, the trip to the offsite location must be on a "casual and short term basis," and must not be to perform work in an occupation in which workers are on strike or lockout. For peripatetic workers any single trip cannot exceed five days. For the occasional offsite worker, a single trip cannot exceed ten days.

C. “Worksite” Temporary Placement

If a location not indicated on the LCA meets the definition “worksite”, an employer may place a covered worker at that site, for a period of up to 60 days without filing a new LCA. Worksite temporary placement is subject to following requirements and restrictions:

- (i) Where the aggregate period of short-term placement during a one-year period does not exceed thirty days, the employer must pay the actual cost of travel to the short-term location as well as the cost of lodgings, meals and incidental expenses. The employer must continue to pay the employee the required wage for the location indicated on the LCA, and continue to satisfy all of the LCA requirements (concerning wages, strikes or lockouts, working conditions and notice of filing) for the employee’s permanent worksite (the worksite indicated on the LCA). Additionally, the short-term assignment must not be at a location where there is a strike or lockout in the same occupational classification as that of the covered worker.
- (ii) Where the aggregate period of a short-term placement in a one-year period is greater than thirty days but less than sixty days, the employer must comply with all the requirements listed in the above paragraph, and be able to show that the H-1B worker spends a substantial amount of time at the permanent worksite in a one-year period, maintains an office or work station at that permanent worksite, and resides in the locality that includes the permanent worksite.
- (iii) Once the aggregate period of short-term off-site placement reaches either the thirty or sixty day limit, the employer must either terminate the short-term placement of the covered worker by returning the worker to the permanent worksite, or transfer the worker to another temporary worksite in another locality. Alternately, a new LCA must be filed to add a new worksite to the site or sites already listed.

An employer may not put a covered worker into short-term-placement at a worksite if that worksite is also the LCA-certified short-term-placement worksite of another covered worker in the same occupational classification. For example:

A company has an H-1B petition approved, and LCA certified for a software engineer at its San Jose worksite. The company wishes to transfer that engineer to its Seattle worksite, to work in the same occupational classification. However, the company already has another H-1B petition approved, and LCA certified for a Seattle engineer at its Seattle worksite. The employer is required to file a new petition for the San Jose-based engineer before that engineer is eligible to work at the Seattle worksite.

3. PAYMENT OF WAGES/SALARY

A. When Wages/Salary Must be Paid

Payment of wages or salary must be made on a regular pro rata basis at least once a month. In the event that the employer intends to use an alternate discretionary form of payment (*e.g.* a quarterly production bonus) as the supplementary payment that brings an employee’s wage into line with the prevailing wage obligation, that employer’s documentation of wage payments must demonstrate a commitment to making that alternative payment. In other words, the alternative payment must be “guaranteed” and the employer must be able to document this.

B. Payment of Wages/Salary where Subject Worker is “Nonproductive Status” (“Benching”)

An employer must begin paying a covered worker no later than thirty days from the day that worker is first admitted into the United States on H-1B, H-1B1 or E-3 status. If a covered worker is in the United States prior to being employed, the employer must begin the payment of wages no later than sixty days from the date of that covered worker’s authorized commencement of employment with the employer.

If the covered worker is placed in non-productive status by the employer, or is unable to work due to the lack of an appropriate permit or license, the employer is still obligated to pay the wage specified on the LCA. If, however, the covered worker voluntarily leaves work for a period or is temporarily incapacitated (for reasons unrelated to employment) the employer is not obliged to pay the required wage for that period, unless the employer’s benefits plan or the law impose an independent obligation to pay.

Please note that these regulatory provisions govern only an employer’s obligation to pay the required wage in certain circumstances. They have no bearing on whether a covered worker is maintaining valid nonimmigrant status.

C. Authorized Deductions

Deductions from a covered worker’s salary may be made if they are deductions that meet at least one of the following criteria:

- (i) The deduction is required by law (*e.g.* FICA, income tax);
- (ii) The deduction is authorized by a collective bargaining agreement;
- (iii) The deduction is reasonable and customary in the occupation and/or area of employment (*e.g.* union dues, contribution to premium for health insurance policy or retirement plans);
- (iv) The deduction is made for the benefit of the covered worker (*e.g.* as housing and food costs) and is consequent upon the voluntary and written authorization of that covered worker. Under these circumstances, however, the deduction may not exceed 25% of the covered worker’s salary, and the services or goods provided must be the fair market value or actual cost (whichever is lower) of the goods or services for which the deduction is made.

Non-authorized deductions are deductions:

- (i) For the purpose of adjusting the amount paid by the employer as “required wage” against an estimate of what that amount should have been;
- (ii) To recoup a business expense (*e.g.* the cost of tools and equipment; attorney fees and filing fees for the nonimmigrant petition or application);
- (iii) As “penalty” for ceasing employment before a specified time;
- (iv) As reimbursement of the \$750 or \$1,500 training fee associated with the H-1B petition.

4. IMPACT ON LCA OF A CHANGE IN CORPORATE STRUCTURE

Where a corporate acquisition, merger or other restructuring has occurred, the successor company need not file a new LCA or amend H-1B workers’ petitions if the duties, wages and working conditions of the workers remain the same, and the successor employer agrees in writing to assume all the obligations and liabilities set out under the LCA by the prior company. The successor employer must:

- (i) Place this signed statement and the LCAs affected by the change in corporate structure in the public access file (see: “Guidelines for Public Access File and Retention of Related Documents” in Part B of this Handbook)
- (ii) Comply with other record keeping requirements. (Please contact our office for assistance with preparing the necessary documents if your company experiences any change in corporate ownership, or the company’s Employer Identification Number (“EIN”) changes.)

If the successor employer chooses not to produce documents assuming the LCA obligations, new LCAs and amended petitions must be filed for each covered worker whom the successor employer wishes to retain.

5. H-1B DEPENDENCY & WILLFUL VIOLATORS²

The *American Competitiveness and Workforce Improvement Act of 1998* (“ACWIA”) created additional rules for companies that are “H-1B Dependent” (employing over a certain percentage of H-1B workers) and companies that have been found to be “Willful Violators” of their previous or existing H-1B obligations. These rules were originally set to expire at the end of the 2003 fiscal year. However, on December 8, 2004, the *Consolidated Appropriations Act of 2004* made them a permanent part of the H-1B landscape.

Willful Violators or H-1B Dependent employers must attest and document that they have not and will not displace U.S. workers, and that they have recruited U.S. workers for the position to be held by the H-1B worker before filing a new LCA.

A. Determining H-1B Dependency

Although determining H-1B dependency is obvious in most cases, this determination may involve a detailed analysis of the composition of the employer’s workforce, as well as of the workforce of that employer’s affiliated companies in the U.S. This determination must be made every time a new LCA is filed. The ratio of H-1B workers to the employee total that identifies an employer as H-1B Dependent varies with the size of the company:

- Employers of fewer than 25 “full-time equivalent” (defined below) employees are considered H-1B Dependent if 8 or more employees are H-1B workers;
- Employers of between 25 and 50 full time equivalent employees are considered H-1B Dependent if 13 or more employees are H-1B workers;
- Employers with over 50 full-time equivalent employees are considered H-1B Dependent if 15% or more employees are H-1B workers.

For the purpose of calculating H-1B Dependency, the term “employer” is consistent with the Internal Revenue Code (“IRC”) definition of a “single employer.” Thus, all employees of related corporate entities that are within the same “controlled group of corporations” as defined by the IRC should be considered in the determination of full-time equivalent employees.

The term “full-time equivalent employees” refers to the total number of a company’s employees. That total includes the aggregate of part-time employees. Determination of that total, which necessarily involves a detailed review of human-resource records, is required only of the employer who “appears” to be H-1B Dependent. That employer must perform the “full calculation” described below. Where H-1B

² This section only applies to employers of H-1B workers, and not H-1B1 or E-3 workers.

dependency is “readily apparent” or the “snapshot test” (see below) shows Non-Dependency, a calculation of the number of full-time equivalent employees is not required.

An employer must consider all H-1B workers employed in the core company and in its subsidiary and associated branches that meet the IRC definition of “single employer.” This is done on the following three-part test.

STEP ONE: Is H-1B Dependency or Non-Dependency “Readily Apparent”?

For employers whose H-1B Dependency or Non-Dependency is “readily apparent”, calculating H-1B Dependency is not required. For example, an employer with 300 employees, only five of whom are H-1B workers, clearly is non-dependent. A company employing 300 persons, 100 of whom are H-1B workers, clearly is dependent. Neither is required to perform Step Two, the “snapshot test”, nor Step Three, the “full calculation” described below. The employer need not document this determination, nor calculate the number of full-time equivalent employees. Payroll records and copies of all H-1B petitions, however, should be kept in case of a DOL audit.

STEP TWO: The “Snapshot Test” for Borderline H-1B Dependency

Where H-1B Dependency is not readily apparent, the employer should perform the “Snapshot Test” as follows: If a company employs less than twenty-five people, more than seven of whom are H-1B workers, the full Step Three calculation (below) of H-1B Dependency is required. If seven employees or fewer are H-1B workers, a full calculation is not required. If the company employs between twenty-five and fifty people, a full calculation should be performed if more than twelve of them are H-1B covered workers. For large employers (with fifty-one employees or more), a full calculation is required if 15% or more of them are H-1B covered workers.

If an employer performs this test and finds that the H-1B covered worker/employee total ratio is below the levels indicated above, that employer is not required to perform the full Dependency calculation. A written record of the snapshot determination is also not required. The employer should keep payroll records and copies of all H-1B petitions, in case of a DOL audit.

STEP THREE: “Full Calculation” of H-1B Dependency

An employer who does not pass the snapshot test for Non-Dependency may perform the full H-1B Dependent calculation by calculating the total number of full-time equivalent employees.

Included in the “full-time equivalent employees” definition are part-time employees aggregated as full-time employees (*e.g.* 2 workers, each performing 20 hours’ work a week = 1 full-time worker).

Not included in the full-time equivalent definition are bona fide consultants or independent contractors. Consequently, employers may not count persons for whom FICA and FLSA are not withheld, and with whom they have no common-law employer-employee relationship, in their determinations of the number of their full-time equivalent employees.

Workers in non-immigrant statuses other than H-1B also may not be included in the full-time equivalent calculation. Accordingly, employees in L, O, E or TN status may not be included in the total of full-time-equivalent employees.

If the completed full calculation shows an employer not H-1B Dependent, that employer must keep a dated copy of the calculation that established the fact of the non-dependency.

Exempt H-1B Workers

Even an employer who is H-1B dependent need not make the additional attestations (described below) for LCAs filed solely for “exempt” H-1B workers. Exempt H-1B workers are those whose wage is \$60,000 a year or more, or who hold a Master-level or higher degree in a specialty related to the occupation for which the LCA is filed. Where an employer is dependent, however, it must indicate this fact on the LCA and keep records demonstrating the “exempt” status of workers. This is explained further in the Guidelines for Public Access File and Retention of H-1B Related Documents, in Part B of this Handbook.

B. Willful Violators

A Willful Violator is an employer deemed by the DOL or the USCIS to have violated LCA requirements “willfully”, or to have made a “misrepresentation of a material fact” in the five-year period before filing the LCA, and the DOL or the USCIS entered that finding on or after October 21, 1998. Employers who are “Willful Violators” must comply with the additional attestation requirements (outlined below).

C. Obligations for H-1B Dependent Employers and Willful Violators

H-1B Dependent employers and Willful Violators who seek to file new LCAs for H-1B workers must indicate their Dependent or Willful Violator status on the LCA form, and must make several attestations in addition to the four attestations (described above) concerning the required wage, working conditions, strikes and lockouts, and notice. Employers who have determined themselves to be H-1B Dependent or are Willful Violators must attest that:

- (i) They have not displaced U.S. workers, either directly on their worksites or indirectly (“secondarily”) at the worksite of another employer to whom H-1B workers are assigned, in the ninety-day period before they filed the H-1B petition;
- (ii) They will not displace U.S. workers during the ninety-day period after that filing;
- (iii) They have sought to recruit U.S. workers with offers of the same or higher wages, and of the same or better working conditions, as that they offered prospective H-1B workers.

D. Non-Displacement of U.S. Workers

An H-1B Dependent or Willful Violator employer may not, in the period beginning ninety days before and ending ninety days after the filing of the H-1B petition, terminate a U.S. worker who is performing a job that is essentially the equivalent of the job for which that employer is seeking an H-1B worker. To document compliance with this rule, that employer must retain records concerning the circumstances under which a U.S. worker left the employment that the employer is proposing to offer to an H-1B worker. These documents must be made available to the DOL upon its request in an enforcement action.

Secondary Displacement

When an H-1B Dependent or Willful Violator employer offers to place H-1B workers at another employer’s work site, that other employer should exercise due diligence and make reasonable inquiries to determine whether the employer making the offer has displaced (laid off) or intends to displace similarly-employed U.S. workers. Assurance in this matter from the employer who makes the offer should be in the form of a written statement or exist as a non-displacement clause in a contract or as a filed memorandum that describes an oral assurance. These should be retained and made available to the DOL in the event of an investigation.

E. Recruitment of U.S. Workers

In addition to observing the prohibition on the displacement of U.S. workers, H-1B Dependent employers and Willful Violators must attest in good faith to an intention to recruit, and maintain documentation of their efforts to recruit, U.S. workers. They must abide by industry-wide standards, and offer remuneration that is at least as attractive as the remuneration they propose to offer an H-1B worker.

There is some uncertainty as to when the recruitment of U.S. workers must occur, relative to when an H-1B worker is employed. It appears that the DOL will require that the recruitment take place before the filing of the LCA.

In recruiting, the employer must actively seek qualified workers, using methods and media which are common in the industry, and may only exclude applicants on the basis of “legitimate selection criteria” that are normal and customary to the industry. The employer may not skew these criteria in favor of H-1B workers it wishes to hire. Additionally, the employer must document recruitment efforts, and make them available in the Public Access File.

Please note that the DOL’s proposed regulations relieve H-1B Dependent and Willful Violator employers from the obligation to conduct recruitment of U.S. workers if the H-1B petition is being filed for a worker who is eligible for one of the first-preference immigrant categories (Multinational Manager, Outstanding Researcher or Alien of Extraordinary Ability). It is, however, in an employer’s interest to be able to tender proof, in the event of an audit, that the prospective employee is eligible for such classification.

6. PUBLIC ACCESS TO CERTAIN RECORDS, AND INVESTIGATIONS BY THE DOL

Employers of H-1B, H-1B1 or E-3 workers are required, upon request, to make available for public examination each LCA filed by the employer within one day of the filing of the LCA. The employer must also make available supporting documentation for the LCA, including the following documents:

- A full and clear explanation of the system that the employer used to set the actual wage for workers in the same occupational classification, including periodic rate increases;
- A copy of the salary survey or DOL determination used to establish the prevailing wage;
- A memorandum indicating that the LCA was posted for the requisite time period;
- A summary of the benefits offered to U.S. workers in the same occupational classification, with an explanation of differentiations of benefits, and of whether home-country benefits are being received for the H-1B worker for whom the LCA was filed.

Additional record keeping requirements apply to H-1B Dependent Employers and Willful Violators and to employers who have undergone corporate restructuring or a change in EIN (discussed above).

The DOL is authorized, upon receiving a complaint from an aggrieved party or any member of the public, to investigate all records it deems necessary for determining whether a violation of requirements has occurred. Violations include: failure to maintain public access records (described in paragraph above), payroll records or copies of filed H-1B petitions. Random investigations may also be conducted by the DOL of H-1B Dependent or Willful Violator employers. Recently, the Consolidated Appropriations Act of 2004 has given the Department of Homeland Security authority, via the USCIS, to conduct investigations of employers even in the absence of any complaint regarding that employer, so long as the Department has a “reasonable belief” that the employer has violated laws or regulations.

7. FINES AND SANCTIONS FOR VIOLATING LCA REQUIREMENTS

Failure to comply with the LCA requirements or to provide the necessary records and documents for public examination could subject an employer to significant monetary fines, disqualification from future use of the H-1B program and, in certain circumstances, criminal penalties.

A. Civil Monetary Penalties

Civil fines that may be imposed by the DOL in an enforcement action range from \$1,000 for minor violations, to \$35,000 for serious violations. Additional penalties may also be imposed, including forced back payment of wages for certain violations, and disqualification from future use of the H-1B program.

FIRST TIER FINES: up to \$1,000 each: Violations of the LCA requirements and material misrepresentations on the LCA form can result in fines of up to \$1,000 per violation, in addition to other penalties.

SECOND TIER FINES: up to \$5,000 each: Where the misrepresentation or violation of the LCA obligations is deemed to be “willful,” the DOL may impose penalties of up to \$5,000 per violation. Additionally, a finding of willfulness will impose on the employer the attestation requirements (described above) that are incumbent upon Willful Violators.

THIRD TIER FINES: up to \$35,000 each: Where the LCA misrepresentation or violation has been willful, and the employer has actually displaced a US worker during the ninety days before or after the filing of the H-1B, H-1B1 or E-3 petition or application (regardless of whether the employer is at the time subject to the non-displacement provisions for H-1B Dependent Employers and Willful Violators), the DOL may prefer penalties of up to \$35,000 per violation. As with Second Tier violations, a finding of willfulness will subject the employer to the additional attestation requirements (described above) that are incumbent upon Willful Violators.

B. Back Payment of Wages

Where the DOL determines that the employer has failed to pay the required wage or has failed to provide benefits as required, it will assess the employer and oversee the payment of back wages or fringe benefits to the aggrieved employee in the amount of the deficiency.

C. Debarment from Future use of H-1B Program

In addition to the monetary fines described above, the DOL can request that the USCIS disqualify for at least one year new filings of H-1B petitions from an employer who has made material misrepresentation on the LCA form, or has violated certain LCA obligations. Where the violation or misrepresentation has been willful, the employer will be disqualified for at least two years. Where the violation is willful, and the employer has displaced an U.S. worker, the employer will be disqualified for at least three years.

D. Criminal Fines and Penalties

In addition to civil penalties, knowingly and willfully filing an LCA which misrepresents a material fact could subject an employer, or the employer’s agent, to criminal penalties of up to \$10,000 and/or to imprisonment for a period up to five years. Failure to cooperate with DOL in providing records and information deemed appropriate by the DOL in the course of an investigation could also subject the employer to criminal liability for interference with a Federal Officer in the performance of official duties.

Part B: Guidelines for Public Access Files and Retention of Related Documents

There are numerous statutory and regulatory provisions requiring that certain documents related to H-1B, H-1B1 and E-3 petitions and applications be retained by employers of workers in these statuses. Some of these documents must be retained in a file which can be reviewed by the public upon request (referred to as the Public Access File), while other documents should be retained onsite by the employer, in confidential files. We suggest that such documentation be maintained as set out below. (Please see Appendix 1 for a diagram of our recommend record keeping system).

1. PUBLIC ACCESS FILE

A. Information Relating to Individual Petitions and/or Applications

We advise that the following documentation be included in the Public Access File. (Because this file is accessible by the public, we recommend that it not contain identifying information relating to your individual H-1B workers, such as their names and social security numbers.) A confidential cross-referencing identification system may be created by linking the Public Access File documentation to specific individual H-1B workers (see Appendix 1). The following information is to be placed in the Public Access File within one (1) day of filing the LCA with the DOL:

- (i) **ORIGINAL SIGNED LCA:** A copy of the signed LCA must be placed in the Public Access File, including all instructional cover pages. Please note that only one copy of the instructional cover pages need be kept in the Public Access File. We recommend also that a copy of the certified LCA be placed in the Public Access File (Samples of the LCA and LCA Cover Pages are included at Appendices 2 and 3).
- (ii) **PREVAILING WAGE DOCUMENTATION:** The Public Access File must contain a copy of the information utilized to establish the prevailing wage for each LCA. This may consist of a copy of a prevailing wage determination from DOL, or alternately, of a copy of a wage survey meeting the requirements of the DOL. If a private (non-governmental) wage survey is used, information regarding the source (e.g. copy of survey title page) and wage sampling methodology (e.g. number and type of companies surveyed, geographical location, etc.) must also be included. (Please see sample Wage Survey at Appendix 4).
- (iii) **AN" ACTUAL WAGE" MEMORANDUM** describing the system used to establish the wage paid to each covered worker must be maintained in the Public Access File. This is to consist of a full, clear explanation of the system used by the employer to set the actual wage that is paid to all employees in the occupation held by covered workers, including a schedule of any periodic increases. Such documentation shall identify each covered worker's wage, and should be updated as increases in salary are given (Please see sample Memorandum of Actual Wage at Appendix 7).
- (iv) **BENEFITS MEMORANDUM:** A detailing benefits offered to U.S. workers in the same occupation as that in which the covered worker is engaged must be maintained in the Public Access File. This memorandum should contain the following information:

- Benefits. Summary of the benefits that were offered to U.S. workers in the occupations presently held by all covered workers;
- Differentiation in Benefits. Where not all employees were offered or receive the same benefits, a statement regarding the basis of differentiation;
- Home Country Benefits. If some or all covered workers are eligible under law and do receive “home country” or “expatriate” benefits, a statement regarding such eligibility.

B. LCA Posting and Notice

A statement acknowledging the company’s compliance with LCA posting requirements, and evidence of the provision of the LCA to the covered worker, must be included in the Public Access File. This statement should consist of a signed acknowledgement by a company official regarding the proper posting of the LCA, including: (1) the dates of posting, (2) posting locations, and (3) confirmation regarding the provision of a copy of the certified LCA to the covered worker on or before the first day of that worker’s employment (Please see sample Acknowledgement Statement at Appendix 8).

C. Information Relating to Company

H-1B DEPENDENCY CALCULATION: For borderline H-1B dependent employers, dated copies of H-1B Non-Dependency calculations must be included in the Public Access File. (See Section 5 in Part A of this Handbook)

CORPORATE CHANGES AND ASSUMPTION OF OBLIGATIONS: When a change occurs in the corporate structure of a company that employs H-1B, H-1B1 or E-3 workers, the required sworn statement regarding the assumption of all obligations of the prior employer, with an accompanying list of affected LCAs, must be included in the Public Access File. (See Section 4 in Part A of this Handbook)

LIST OF CORPORATE ENTITIES: For H-1B employers with parent and/or subsidiary relationships, a list of the entities included in determining H-1B Dependency status under the “single employer” definition of the IRC must be included in the Public Access File. (See Section 5 in Part A of this Handbook)

EXEMPT NONIMMIGRANT WORKERS: H-1B Dependent and/or Willful Violator employers must include a list of all exempt H-1B workers (H-1B workers with Master-level or higher degrees in a specialty related to the occupation or earning \$60,000 or more per year). (See Section 5 in Part A of this Handbook)

RECRUITMENT OF U.S. WORKERS: H-1B Dependent and/or Willful Violator employers must include documentation of good faith and industry standard efforts at recruiting U.S. workers. Certain documentation may be retained in separate confidential files in case of a DOL audit. (See Section 5 in Part A of this Handbook)

2. CONFIDENTIAL DOCUMENT RETENTION

Certain documentation must be retained by the employer in the event of a DOL audit, but need not be made available to the public in the public access file. This documentation includes the Acknowledgement of Receipt of the LCA by a covered worker, payroll records, and copies of H-1B, H-1B1 and E-3 petitions and applications.

In addition, H-1B Dependent and/or Willful Violator employers must retain, separately from the Public Access File, certain documentation regarding good faith and industry standard efforts at recruiting U.S.

workers. For example, copies of all print advertisements, internet postings and recruitment notices posted internally may be maintained privately.

3. FILE RETENTION PERIODS

A. LCA used for Subject Worker

Records must be maintained for one year beyond the last day of the employment of a covered worker.

B. LCA not used for Subject Worker

If the individual for whom an LCA was filed is ultimately not hired, records must be maintained for one year beyond either the expiration of the LCA or the withdrawal of the LCA.

Appendices

Appendix 1: Public Access and Related Documents Filing System Chart

Appendix 2: Sample Labor Condition Application

Appendix 3: Sample Labor Condition Application Instructional Cover Pages

Appendix 4: Sample Wage Survey

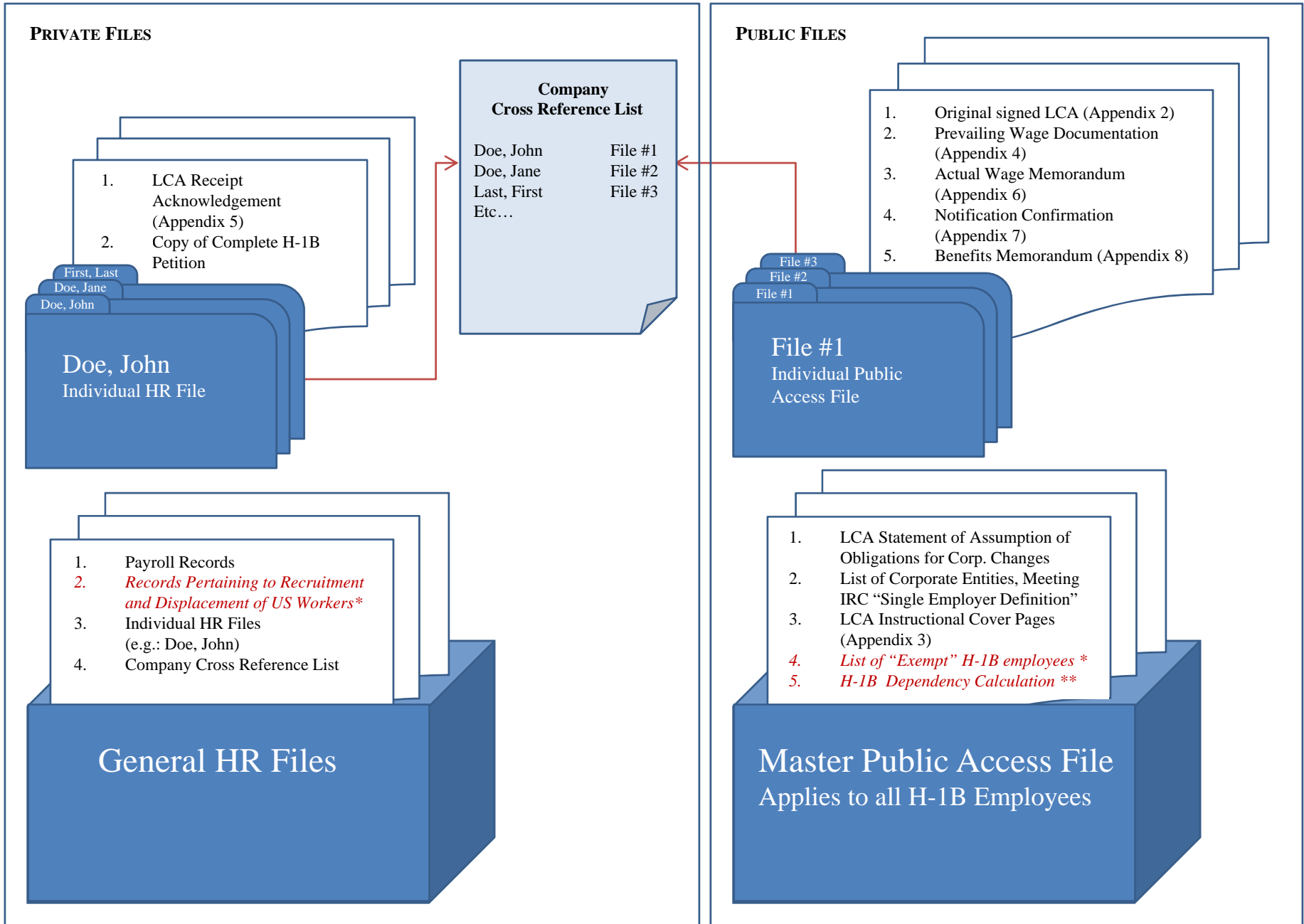
Appendix 5: Sample LCA Receipt Acknowledgment

Appendix 6: Sample Actual Wage Memorandum

Appendix 7: Sample Notification Confirmation

Appendix 8: Sample Benefits Memorandum

PUBLIC ACCESS AND RELATED DOCUMENTS FILING SYSTEM



* *Pertains only to H-1B Dependent Employers*
 ** *Applies only to "Borderline H-1B Dependent Employers"*

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor



**Electronic Filing of Labor Condition Applications
For The H-1B Nonimmigrant Visa Program**

This Department of Labor, Employment and Training Administration (ETA), electronic filing system enables an employer to file a Labor Condition Application (LCA) and obtain certification of the LCA. This Form must be submitted by the employer or by someone authorized to act on behalf of the employer.

- A) I understand and agree that, upon my receipt of ETA's certification of the LCA by electronic response to my submission, I must take the following actions at the specified times and circumstances:
- print and sign a hardcopy of the electronically filed and certified LCA;
 - maintain a signed hardcopy of this LCA in my public access files;
 - submit a signed hardcopy of the LCA to the United States Citizenship and Immigration Services (USCIS) in support of the I-129, on the date of submission of the I-129;
 - provide a signed hardcopy of this LCA to each H-1B nonimmigrant who is employed pursuant to the LCA.

Yes No

B) I understand and agree that, by filing the LCA electronically, I attest that all of the statements in the LCA are true and accurate and that I am undertaking all the obligations that are set out in the LCA (Form ETA 9035E) and the accompanying instructions (Form ETA 9035CP).

Yes No

C) I hereby choose one of the following options, with regard to the accompanying instructions:

I choose to have the Form ETA 9035CP electronically attached to the certified LCA, and to be bound by the LCA obligations as explained in this form

I choose not to have the Form ETA 9035CP electronically attached to the certified LCA, but I have read the instructions and I understand that I am bound by the LCA obligations as explained in this form

Appendix 2

OMB Approval: 1205-0310
Expiration Date: 01/31/2012

~~WWW~~ Labor Condition Application for Nonimmigrant Workers
~~WWW~~ ETA Form 9035 & 9035E
U.S. Department of Labor



Please read and review the filing instructions carefully before completing the ETA Form 9035 or 9035E. A copy of the instructions can be found at <http://www.foreignlaborcert.doleta.gov/>. In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor. If the employer has received permission from the Administrator of the Office of Foreign Labor Certification to submit this form non-electronically, ALL required fields/items containing an asterisk (*) must be completed as well as any fields/items where a response is conditional as indicated by the section (§) symbol.

A. Employment-Based Nonimmigrant Visa Information

1. Indicate the type of visa classification supported by this application (Write classification symbol): *	H-1B
--	------

B. Temporary Need Information

1. Job Title * SOFTWARE ENGINEER	
2. SOC (ONET/OES) code * 15-1032.00	3. SOC (ONET/OES) occupation title * COMPUTER SOFTWARE ENGINEERS, SYSTEMS SOFTWARE
4. Is this a full-time position? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Period of Intended Employment
	5. Begin Date * 10/01/2010 <small>(mm/dd/yyyy)</small>
7. Worker positions needed/basis for the visa classification supported by this application	
<input type="text" value="1"/> Total Worker Positions Being Requested for Certification *	
Basis for the visa classification supported by this application <i>(indicate the total workers in each applicable category based on the total workers identified above)</i>	
<input type="text" value="0"/> a. New employment *	<input type="text" value="0"/> d. New concurrent employment *
<input type="text" value="0"/> b. Continuation of previously approved employment * without change with the same employer	<input type="text" value="1"/> e. Change in employer *
<input type="text" value="0"/> c. Change in previously approved employment *	<input type="text" value="0"/> f. Amended petition *

C. Employer Information

1. Legal business name * ABC, INC.		
2. Trade name/Doing Business As (DBA), if applicable N/A		
3. Address 1 * 1234 ANY STREET		
4. Address 2 SUITE 500		
5. City * SAN JOSE	6. State * CA	7. Postal code * 12345
8. Country * UNITED STATES OF AMERICA		9. Province N/A
10. Telephone number * 4085554567		11. Extension 1000
12. Federal Employer Identification Number (FEIN from IRS) * 120000034		13. NAICS code (must be at least 4-digits) * 518111

Appendix 2

OMB Approval: 1205-0310
Expiration Date: 01/31/2012

~~AWA~~ Labor Condition Application for Nonimmigrant Workers
~~AWA~~ ETA Form 9035 & 9035E
U.S. Department of Labor

**D. Employer Point of Contact Information**

Important Note: The information contained in this Section must be that of an employee of the employer who is authorized to act on behalf of the employer in labor certification matters. The information in this Section must be different from the agent or attorney information listed in Section E, unless the attorney is an employee of the employer.

1. Contact's last (family) name *	2. First (given) name *	3. Middle name(s) *
BLOGGS	JOE	N/A
4. Contact's job title * VICE PRESIDENT HUMAN RESOURCES		
5. Address 1 * 1234 ANY STREET		
6. Address 2 SUITE 500		
7. City * SAN JOSE	8. State * CA	9. Postal code * 12345
10. Country * UNITED STATES OF AMERICA		11. Province N/A
12. Telephone number * 4085554567	13. Extension N/A	14. E-Mail address JBLOGGS@ABC-INC.COM

E. Attorney or Agent Information (If applicable)

1. Is the employer represented by an attorney or agent in the filing of this application? *		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If "Yes", complete the remainder of Section E below.			
2. Attorney or Agent's last (family) name § SMITH	3. First (given) name § JOHN	4. Middle name(s) § N/A	
5. Address 1 § 9876 ANY STREET			
6. Address 2 SUITE 1000			
7. City § SAN FRANCISCO	8. State § CA	9. Postal code § 12345	
10. Country § UNITED STATES OF AMERICA		11. Province N/A	
12. Telephone number § 4155554321	13. Extension N/A	14. E-Mail address JOHN@LAWOFFICEOFJOHNSMITH.COM	
15. Law firm/Business name § LAW OFFICE OF JOHN SMITH		16. Law firm/Business FEIN § 223344455	
17. State Bar number (only if attorney) § 111112		18. State of highest court where attorney is in good standing (only if attorney) § CALIFORNIA	
19. Name of the highest court where attorney is in good standing (only if attorney) § CALIFORNIA SUPREME COURT			

Appendix 2

OMB Approval: 1205-0310
Expiration Date: 11/31/2012



~~WETA~~ Labor Condition Application for Nonimmigrant Workers
~~WETA~~ Form 9035 & 9035E
U.S. Department of Labor

F. Rate of Pay

1. Wage Rate (Required) From: \$ <u>115000.00</u> * To: \$ <u>N/A</u>	2. Per: (Choose only one) * <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input checked="" type="checkbox"/> Year
---	---

G. Employment and Prevailing Wage Information

Important Note: It is important for the employer to define the place of intended employment with as much geographic specificity as possible. The place of employment address listed below must be a physical location and cannot be a P.O. Box. The employer may use this section to identify up to three (3) physical locations and corresponding prevailing wages covering each location where work will be performed and the electronic system will accept up to 3 physical locations and prevailing wage information. If the employer has received approval from the Department of Labor to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section.

a. Place of Employment 1

1. Address 1 * 1234 ANY STREET	
2. Address 2 SUITE 500	
3. City * SAN JOSE	4. County * SANTA CLARA
5. State/District/Territory * CALIFORNIA	6. Postal code * 12345
Prevailing Wage Information (corresponding to the place of employment location listed above)	
7. Agency which issued prevailing wage § N/A	7a. Prevailing wage tracking number (if applicable) § N/A
8. Wage level * <input type="checkbox"/> I <input checked="" type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV <input type="checkbox"/> N/A	
9. Prevailing wage * \$ <u>105123.00</u>	10. Per: (Choose only one) * <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Bi-Weekly <input type="checkbox"/> Month <input checked="" type="checkbox"/> Year
11. Prevailing wage source (Choose only one) * <input checked="" type="checkbox"/> OES <input type="checkbox"/> CBA <input type="checkbox"/> DBA <input type="checkbox"/> SCA <input type="checkbox"/> Other	
11a. Year source published * 2010	11b. If "OES", and SWA/NPC did not issue prevailing wage OR "Other" in question 11, specify source § OFLC ONLINE DATA CENTER

H. Employer Labor Condition Statements

! Important Note: In order for your application to be processed, you MUST read Section H of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading “Employer Labor Condition Statements” and agree to all four (4) labor condition statements summarized below:

- (1) **Wages:** Pay nonimmigrants at least the local prevailing wage or the employer’s actual wage, whichever is higher, and pay for non-productive time. Offer nonimmigrants benefits on the same basis as offered to U.S. workers.
- (2) **Working Conditions:** Provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed.
- (3) **Strike, Lockout, or Work Stoppage:** There is no strike, lockout, or work stoppage in the named occupation at the place of employment.
- (4) **Notice:** Notice to union or to workers has been or will be provided in the named occupation at the place of employment. A copy of this form will be provided to each nonimmigrant worker employed pursuant to the application.

1. I have read and agree to Labor Condition Statements 1, 2, 3, and 4 above and as fully explained in Section H of the Labor Condition Application – General Instructions – Form ETA 9035CP. *	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---



~~WWW~~ Labor Condition Application for Nonimmigrant Workers
~~WWW~~ ETA Form 9035 & 9035E
 U.S. Department of Labor

I. Additional Employer Labor Condition Statements – H-1B Employers ONLY

! Important Note: In order for your H-1B application to be processed, you MUST read Section I – Subsection 1 of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading “Additional Employer Labor Condition Statements” and answer the questions below.

a. Subsection 1

1. Is the employer H-1B dependent? §	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Is the employer a willful violator? §	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. If “Yes” is marked in questions I.1 and/or I.2, you must answer “Yes” or “No” regarding whether the employer will use this application <u>ONLY</u> to support H-1B petitions or extensions of status for exempt H-1B nonimmigrants? §	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A

If you marked “Yes” to questions I.1 and/or I.2 and “No” to question I.3, you MUST read Section I – Subsection 2 of the Labor Condition Application – General Instructions Form ETA 9035CP under the heading “Additional Employer Labor Condition Statements” and indicate your agreement to all three (3) additional statements summarized below.

b. Subsection 2

- A. **Displacement:** Non-displacement of the U.S. workers in the employer’s workforce
- B. **Secondary Displacement:** Non-displacement of U.S. workers in another employer’s workforce; and
- C. **Recruitment and Hiring:** Recruitment of U.S. workers and hiring of U.S. workers applicant(s) who are equally or better qualified than the H-1B nonimmigrant(s).

4. I have read and agree to Additional Employer Labor Condition Statements A, B, and C above and as fully explained in Section I – Subsections 1 and 2 of the Labor Condition Application – General Instructions Form ETA 9035CP. §	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

J. Public Disclosure Information

! Important Note: You must select from the options listed in this Section.

1. Public disclosure information will be kept at: *	<input checked="" type="checkbox"/> Employer’s principal place of business <input type="checkbox"/> Place of employment
---	--

K. Declaration of Employer

By signing this form, I, on behalf of the employer, attest that the information and labor condition statements provided are true and accurate; that I have read sections H and I of the Labor Condition Application – General Instructions Form ETA 9035CP, and that I agree to comply with the Labor Condition Statements as set forth in the Labor Condition Application – General Instructions Form ETA 9035CP and with the Department of Labor regulations (20 CFR part 655, Subparts H and I). I agree to make this application, supporting documentation, and other records available to officials of the Department of Labor upon request during any investigation under the Immigration and Nationality Act. Making fraudulent representations on this Form can lead to civil or criminal action under 18 U.S.C. 1001, 18 U.S.C. 1546, or other provisions of law.

1. Last (family) name of hiring or designated official * DOE	2. First (given) name of hiring or designated official * JANE	3. Middle initial * N/A
4. Hiring or designated official title * CEO		
5. Signature *		6. Date signed *

Appendix 2

OMB Approval: 1205-0310
 Expiration Date: 01/31/2012



~~WETA~~ Labor Condition Application for Nonimmigrant Workers
~~WETA~~ Form 9035 & 9035E
 U.S. Department of Labor

L. LCA Preparer

Important Note: Complete this section if the preparer of this LCA is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application.

1. Last (family) name § N/A	2. First (given) name § N/A	3. Middle initial § N/A
4. Firm/Business name § N/A		
5. E-Mail address § N/A		

M. U.S. Government Agency Use (ONLY)

By virtue of the signature below, the Department of Labor hereby acknowledges the following:

This certification is valid from 10/01/2010 to 12/02/2012.

William L. Carlson
 Department of Labor, Office of Foreign Labor Certification

09/27/2010
 Determination Date (date signed)

I-700-51301-749813
 Case number

CERTIFIED
 Case Status

The Department of Labor is not the guarantor of the accuracy, truthfulness, or adequacy of a certified LCA.

N. Signature Notification and Complaints

The signatures and dates signed on this form will not be filled out when electronically submitting to the Department of Labor for processing, but **MUST** be complete when submitting non-electronically. If the application is submitted electronically, any resulting certification **MUST** be signed *immediately upon receipt* from the Department of Labor before it can be submitted to USCIS for further processing.

Complaints alleging misrepresentation of material facts in the LCA and/or failure to comply with the terms of the LCA may be filed using the WH-4 Form with any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. A listing of the Wage and Hour Division offices can be obtained at <http://www.dol.gov/esa>. Complaints alleging failure to offer employment to an equally or better qualified U.S. worker, or an employer's misrepresentation regarding such offer(s) of employment, may be filed with the U.S. Department of Justice, Office of the Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW, Washington, DC, 20530. Please note that complaints should be filed with the Office of Special Counsel at the Department of Justice only if the violation is by an employer who is H-1B dependent or a willful violator as defined in 20 CFR 655.710(b) and 655.734(a)(1)(ii).

O. OMB Paperwork Reduction Act (1205-0310)

These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply are mandatory (Immigration and Nationality Act, Section 212(n) and (t) and 214(c). Public reporting burden for this collection of information, which is to assist with program management and to meet Congressional and statutory requirements is estimated to average 1 hour per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave. NW, Washington, DC 20210. (Paperwork Reduction Project OMB 1205-0310.) **Do NOT send the completed application to this address.**

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035CP – General Instructions for the 9035 & 9035E
U.S. Department of Labor



IMPORTANT: Please read these instructions carefully before completing the ETA Form 9035 or 9035E –Labor Condition Application for Nonimmigrant Workers. These instructions contain full explanations of the questions and attestations that make up the ETA Form 9035 and 9035E. ***In accordance with Federal Regulations at 20 CFR 655.730(b), incomplete or obviously inaccurate Labor Condition Applications (LCAs) will not be certified by the Department of Labor. If the employer received approval by the Department of Labor to submit this form non-electronically, ALL required fields/items must be completed as well as any fields/items where a response is conditioned on the response to another required field/item.***

Anyone, who knowingly and willingly furnishes any false information in the preparation of ETA Form 9035 or 9035E and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, punishable by fine or imprisonment up to five years or both (18 U.S.C. §§ 2, 1001). Other penalties apply as well to fraud or misuse of this immigration document and to perjury with respect to this form (18 U.S.C. §§ 1546, 1621).

OMB Notice: These reporting instructions have been approved under the Paperwork Reduction Act of 1995. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Obligations to reply to the ETA 9035 or ETA 9035E are mandatory (Immigration and Nationality Act, Sections 212(n) and (t) and 214(c). Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room C-4312, 200 Constitution Ave. NW, Washington, DC 20210. (Paperwork Reduction Project OMB 1205-0310.

HOW TO FILE

A. Who May File:

A United States employer who desires to apply for a labor condition application on behalf of a foreign worker(s) must file the ETA Form 9035 or 9035E.

B. How to File and Retention of Records

1. For all occupations, online filing of the ETA Form 9035E is required through the LCA Online System accessible at <http://www.foreignlaborcert.doleta.gov>. Employers with physical disabilities that prohibit them from filing electronic applications or employers without Internet access can file the LCA by U.S. mail. These employers must obtain permission to file their application by U.S. mail by submitting a written request to the following address:

Office of Foreign Labor Certification
Employment & Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Room C-4312
Washington, DC 20210
Attn: Temporary Programs Manager

2. In accordance with 20 CFR 655, Subpart H, either at the employer's principal place of business in the U.S. or at the place of employment, the employer shall retain copies of the records required by this subpart for a period of one year beyond the last date on which any H-1B nonimmigrant is employed under the labor condition application or, if no nonimmigrants were employed under the labor condition application, one year from the date the labor condition application expired or was withdrawn. Required payroll records for the H-1B employees and other employees in the occupational classification shall be retained at the employer's principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement action is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in 20 CFR 655, Subpart I. For a complete list of documents that must be retained and/or made available for public access see 20 CFR 655.760.

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035CP – General Instructions for the 9035 & 9035E
U.S. Department of Labor

**Section A****Employment - Based Nonimmigrant Visa Information**

1. Enter one of the following classification symbols to indicate the type of visa supported by this application: **"H-1B"**, **"H-1B1 Chile"**, **"H-1B1 Singapore"** or **"E-3 Australian."** When filing this application electronically, the system will provide a dropdown of these approved visa classification symbols.

The **H-1B** visa allows an employer to temporarily employ a foreign professional worker in the U.S. on a nonimmigrant basis in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty (e.g., sciences, medicine and health care, education, biotechnology, and business specialties, etc...).

The **H-1B1-Chile** visa applies to those employers temporarily hiring business professionals who are nationals of Chile under the Chile Free Trade Agreement.

The **H-1B1-Singapore** visa applies to those employers temporarily hiring business professionals who are nationals of Singapore under the Singapore Free Trade Agreement.

The **E-3** visa applies to those employers temporarily hiring business professionals who are nationals of Australia under Title V of the REAL ID Act of 2005 (Division B) in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.

Section B**Temporary Need Information**

1. Enter the title of the job opportunity for which the labor condition application is being sought by the employer.
2. Enter the six or eight-digit Standard Occupational Classification (SOC)/Occupational Network (O*NET) code for the occupation, which most clearly describes the work to be performed.. For example, the six-digit SOC code for a computer systems analyst is 15-1051.00. **Appendix I** provides a mapping of the current 3-digit Dictionary of Occupational Title (DOT) codes to the SOC/O*NET classification system authorized for use with this form. You may use the 3-digit DOT code to complete the I-129 petition for USCIS.
3. Enter the occupational title associated with the SOC/O*NET (OES) code. For example, the occupational title associated with SOC/O*NET code 15-1051.00 is "Computer Systems Analyst".
4. Enter whether this position is full-time by indicating "Yes" or "No". Although there is no regulatory definition for full-time employment, the Department generally considers 35 hours per week as the distinction point between full-time and part-time.

Note: If this position is part-time, the employer attests that the foreign worker(s) supported by the LCA will not regularly work more than the number of hours indicated (which may be a range of hours) on the United States Citizenship and Immigration Services Form(s) I-129 filed for the nonimmigrant(s). Note: All foreign workers under the LCA must be part-time if question 4 is marked "No"; all foreign workers must be full-time if question 4 is marked "Yes."

5. Enter the beginning date for the worker's period of employment. Use a month/day/full year (MM/DD/YYYY) format.
6. Enter the end date for the worker's period of employment, which cannot be more than three years after the start date for H-1B LCAs and initial H-1B1 LCAs. The end date for the worker's period of employment for E-3 LCAs and H-1B1 extensions cannot be more than two years after the start date. Use a month/day/full year (MM/DD/YYYY) format.
7. The collection of this item contains two parts. First, enter the number of worker positions being requested for certification. Second, use collection items (a) through (f) to enter the number of foreign workers in each applicable USCIS defined category under which you plan to file various Form I-129s for the workers so that the sum of the numbers in (a) through (f) equals the total number of worker positions requested. Every box **MUST** be filled. If the employer plans to request no foreign workers in a particular category, please indicate "0 (zero)."

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035CP – General Instructions for the 9035 & 9035E
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8.
9.
Section C
Employer Information

1. Enter the full legal name of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application. The employer's full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service.
2. Enter the full trade name or "Doing Business As" (DBA) name, if applicable, of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application.
3. Enter the street address of the employer's principal place of business.
4. If additional space is needed for the street address, use this line to complete the employer's street address.
5. Enter the city of the employer's principal place of business. If the city and country are the same, the name must still be entered in both fields.
6. Enter the state of the employer's principal place of business.
7. Enter the postal (zip) code of the employer's principal place of business.
8. Enter the country of the employer's principal place of business. If the city and country are the same, the name must still be entered in both fields.
9. Enter the province of the employer's principal place of business, if applicable.
10. Enter the area code and telephone number for the employer's principal place of business. Include country code, if applicable.
11. Enter the extension of the telephone number for the employer's principal place of business, if applicable.
12. Enter the nine-digit Federal Employer identification Number (FEIN) as assigned by the IRS. Do not enter a social security number.

Note: All employers, including private households, MUST obtain an FEIN from the IRS before completing this application. Information on obtaining an FEIN can be found at www.irs.gov.
13. Enter the four to six-digit North American Industry Classification System (NAICS) code that best describes the employer's business, not the foreign worker's job. A listing of NAICS codes can be found at <http://www.census.gov/epcd/www/naics.html>

Section D
Employer Point of Contact Information

An employer point of contact is an employee of the employer whose position authorizes the employee to provide information and supporting documentation concerning this Labor Condition Application for Nonimmigrant Workers and to communicate with the Department of Labor on behalf of the employer. The employer point of contact should be the individual most familiar with the content of this application and circumstances of the foreign worker's employment.

Note: The employer point of contact information in this Section, specifically the name, telephone number, and email address, must be different from the attorney/agent information listed in Section E, unless the attorney is an employee of the employer.

1. Enter the last (family) name of the employer's point of contact.
2. Enter the first (given) name of the employer's point of contact.
3. Enter the middle initial of the employer's point of contact. In the absence of a middle name, enter N/A.

Appendix 3

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-
4. Enter the job title of the employer's point of contact.
 5. Enter the business street address for the employer's point of contact.
 6. If additional space is needed for the street address, use this line to complete the street address.
 7. Enter the city of the employer's point of contact. If the city and country are the same, the name must still be entered in both fields.
 8. Enter the state of the employer's point of contact.
 9. Enter the postal (zip) code of the employer's point of contact.
 10. Enter the country of the employer's point of contact. If the city and country are the same, the name must still be entered in both fields.
 11. Enter the province of the employer's point of contact, if applicable.
 12. Enter the area code and business telephone number of the employer's point of contact. Include country code, if applicable.
 13. Enter the extension of the telephone number of the employer's point of contact, if applicable.
 14. Enter the business e-mail address of the employer's point of contact in the format [name@emailaddress.top-level](#) domain.
-

Section E **Attorney or Agent Information (if applicable)**

Note: The attorney/agent information in this Section, specifically the name, telephone number, and email address, must be different from the employer's point of contact information in Section D, unless the attorney is an employee of the employer.

1. Identify whether the employer is represented by an attorney or agent in the process of filing this application. Only mark one box. If "Yes" complete the remainder of Section E. If "No" in question 1, skip questions 2 to 19 and continue to Section F.
2. Enter the last (family) name of the attorney/agent.
3. Enter the first (given) name of the attorney/agent.
4. Enter the middle initial of the attorney/agent.
5. Enter the street address of the attorney/agent.
6. If additional space is needed for the street address, use this line to complete the attorney/agent's street address.
7. Enter the city of the attorney/agent. If the city and country are the same, the name must still be entered in both fields.
8. Enter the state of the attorney/agent.
9. Enter the postal (zip) code of the attorney/agent.
10. Enter the country of the attorney/agent. If the city and country are the same, the name must still be entered in both fields.
11. Enter the province of the attorney/agent, if applicable.
12. Enter the area code and telephone number of the attorney/agent. Include country code, if applicable.

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Section E
Attorney or Agent Information (continued)

13. Enter the extension of the telephone number of the attorney/agent, if applicable.
 14. Enter the e-mail address of the attorney/agent in the format [name@emailaddress.top-level](#) domain.
 15. Enter the attorney/agent's law firm or business name.
 16. Enter the attorney/agent's law firm or business nine-digit FEIN as assigned by the IRS. Do not enter a social security number.
 17. Enter the attorney's state Bar number. If the attorney is licensed in more than one state, enter only one state Bar number. If submitting this form electronically and the attorney is licensed in a state which does not issue state Bar numbers, leave the field blank and once confirmed it will be automatically prepopulated with "N/A."
- Note:** The answers to questions 18 and 19 below should correspond to the same state for which a Bar number was provided in question 17, if any.
18. Enter the state of the highest court where the attorney is in good standing.
 19. Enter the name of the highest court in the state where the attorney is in good standing.

Section F
Rate of Pay

1. Enter the rate of pay to be paid to the foreign worker(s). If the wage offer is expressed as a range, enter the bottom of the wage range to be paid.

Enter the top of the wage range to be paid to the foreign worker(s) in the section indicating "Rate Up to (Optional)."
2. Enter whether the rate of pay is in terms of per year, month, two weeks, week or hour in the section indicating "Rate is Per."

Section G
Employment and Prevailing Wage Information

Note: *It is important for the employer to define the place of intended employment with as much geographic specificity as possible. The place of employment address listed must be a physical location and cannot be a Post Office (P.O.) Box. The employer may use this section to identify up to three (3) physical locations and corresponding prevailing wages covering each location where work will be performed. If the employer has received approval from the Department of Labor to submit this form non-electronically and the work is expected to be performed in more than one location, an attachment must be submitted in order to complete this section.*

a. Place of Employment

See the definition of "place of employment" in 20 Code of Federal Regulations (CFR) 655.715 and regulation concerning short term placement in 20 CFR 655.735.

1. Enter the street address of the place of intended employment. If primary address is not known, please enter "N/A".
2. If additional space is needed for the street address, use this line.
3. Enter the city of the place of intended employment.
4. Enter the county of the place of intended employment. If there is no county designation or it is not known, please enter "N/A".
5. Enter the state/district/territory of the place of intended employment.

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6. Enter the postal (zip) code of the place of intended employment. If there is no postal code designation or it is not known, please enter "N/A".

Section G**Employment and Prevailing Wage Information (continued)****PREVAILING WAGE INFORMATION**

7. If the employer received a Prevailing Wage Determination (PWD) from the State Workforce Agency (SWA) or an OFLC National Processing Center (NPC), enter the state/district/territory of the Agency which issued the PWD. If the employer did not obtain a PWD from the SWA or NPC, enter "N/A." **Use this field ONLY where the employer obtained a prevailing wage from the SWA or NPC.**
- 7(a). Enter the prevailing wage tracking number assigned by the SWA or NPC. If the SWA or NPC did not assign a prevailing wage tracking number **OR** the employer did not obtain a PWD from the SWA or NPC, enter "N/A". **Use this field ONLY where the employer obtained a prevailing wage from the SWA or NPC.**
8. If the employer received a prevailing wage from either the SWA, NPC or the Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatacenter.com>, identify whether the wage (skill) level of the job opportunity is a level I, II, III, or IV. Only mark one box. Otherwise, mark "N/A".
9. Enter the prevailing wage for the job opportunity.
10. Identify whether the prevailing wage is per hour, week, bi-weekly, month, or year. Only mark one box.
11. Identify whether the prevailing wage source is Occupational Employment Statistics (OES); Collective Bargaining Agreement (CBA); Davis-Bacon Act (DBA); McNamara-O'Hara Service Contract Act (SCA); or Other (includes employer-provided independent authoritative source survey). In accordance with 20 CFR 655.731, employers may use an independent authoritative wage source in lieu of a SWA or NPC prevailing wage determination or another legitimate source of wage information as long as the data source used meets all the criteria set forth under 20 CFR 655.731(b)(3)(iii)(B) or (C), as appropriate. **Only mark one box.**

Note: Mark "OES" in circumstances where the prevailing wage was obtained from either the SWA, NPC or the Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatacenter.com>

- 11(a). Enter the year in which the data source used to list the prevailing wage was published.
- 11(b). Specify the name of the company and exact wage survey used by the employer for the prevailing wage.

Note: This field should be used in circumstances where the employer has marked "Other" in question 11 **OR** "OES" in question 11 **and** the employer did not obtain a prevailing wage from the SWA or NPC. For example, if the employer obtained a prevailing wage using OES data from the Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatacenter.com>, then the words "OFLC Online Data Center" must be entered in the space provided

Section H**Employer Labor Condition Statements**

The employer must read and agree to statements (1) and (4) below and demonstrate that agreement by marking "Yes" to Question 1 in Section H of the Form ETA 9035E and by signing the application. The employer agrees to develop and maintain documentation supporting labor condition statements (1) and (4) as specified in 20 CFR 655.731 and 655.734, and to make this document available to Department of Labor officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with the Department of Labor. This documentation must be retained for public examination at the place of employment or the employer's principal place of business as specified in Section J of this form.

(1) **Wages:** The employer attests that H-1B, H-1B1 or E-3 foreign workers will be paid wages which are at least the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in

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question or the prevailing wage level for occupational classification in the area of intended employment. By marking "Yes" to Question 1 of Section H, the employer also attests that it will pay these nonimmigrants the required wage for time in nonproductive status due to a decision of the employer or due to the nonimmigrant's lack of a permit or license. The employer further attests that these nonimmigrants will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.731.

(2) **Working Conditions:** The employer attests that H-1B, H-1B1 or E-3 foreign workers in the named occupation will not adversely affect the working conditions of workers similarly employed. The employer further attests that nonimmigrants will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers. See 20 CFR 655.732.

(3) **Strike, Lockout, or Work Stoppage:** The employer attests that on the date the application is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the named occupation at the place of employment and that, if such a strike, lockout, or work stoppage occurs after the application is submitted, the employer will notify the Employment & Training Administration (ETA) within three (3) days of such occurrence and the application will not be used in support of a petition filing with the United States Citizenship and Immigration Services (USCIS) for H-1B, H-1B1 or E-3 nonimmigrants to work in the same occupation at the place of the employment until ETA determines the strike lockout or work stoppage has ceased. See 20 CFR 655.733.

(4) **Notice:** The employer attests that as of the date of filing, notice of the Labor Condition Application (LCA) has been or will be provided to workers employed in the named occupation. Notice of the application shall be provided to workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing shall be provided either through physical posting in conspicuous locations where H-1B, H-1B1 or E-3 nonimmigrants will be employed, or through electronic notification to employees in the occupational classification for which nonimmigrants are sought. The employer further attests that each nonimmigrant employed pursuant to the application will be provided with a copy (or original, as appropriate) of the certified Form ETA 9035E, or ETA 9035 (if applicable). As stated above for H-1B, H-1B1 or E-3 nonimmigrants, the employer must provide the certified LCA to the nonimmigrant, who must follow the H-1B, H-1B1 or E-3 procedures of USCIS and the Department of State. The notification shall be provided no later than the date the nonimmigrant reports to work at the place of employment. See 20 CFR 655.734.

1. Mark "Yes" or "No". The employer must agree to all four labor condition statements listed as (1) to (4). **Please note that marking "Yes" indicates that you have read and agree to the above-listed statements.**

Section I

Additional Employer Labor Condition Statements – H-1B Employers ONLY

All H-1B employers are required to complete Section I of this form in order for an application regarding an H-1B nonimmigrant to be processed. See 20 CFR 655.736 for more detailed guidance as to what constitutes an "H-1B employer" or a "willful violator."

a. Subsection 1

NOTE: The determination as to whether an employer is H-1B dependent is a function of the number of H-1B nonimmigrants employed as a proportion of the total number of full-time equivalent employees employed in the United States. The following table can be used to determine whether the employer is an H-1B dependent employer:

NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES (U.S. WORKERS AND H-1B WORKERS)	NUMBER OF H-1B NONIMMIGRANT EMPLOYEES
1 to 25	8 or more
26 to 50	13 or more
51 or more	15% or more of the workforce (US and H-1B workers)

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1. Mark "Yes" or "No" if the employer is H-1B dependent. The employer is an H-1B dependent employer if the number of H-1B nonimmigrants employed by the employer as a proportion of the total number of full-time equivalent employees employed in the United States matches the chart above.

If an employer marks "No" and is or becomes H-1B dependent, the submitted labor condition application shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B nonimmigrant. By marking "No", the employer also acknowledges that if it uses this application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section H.

2. Mark "Yes" or "No" if the employer is a willful violator. The employer is willful violator if the employer has been found during the five (5) years preceding the date of the application (and after October 20, 1998) to have committed a willful violation or a misrepresentation of a material fact.

If an employer marks "No" and was found, prior to the date of filing, to have committed a willful violation or a misrepresentation, the submitted labor condition application shall be deemed invalid and may not be used in support of a new petition or extension of a petition for an H-1B nonimmigrant. By marking "No," the employer also acknowledges that if it uses this application despite its invalidity, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section I.

3. Mark "Yes" or "No" to this question after marking "Yes" to question 1 or 2 of Subsection 1 in Section I AND the employer intends to use this application ONLY to support H-1B petitions or extensions of status for expected H-1B nonimmigrants who will receive wages at a rate equal to at least \$60,000 per year, or have attained a master's degree (or equivalent or higher degree) in a specialty related to the employment. The employer also agrees to maintain documentation required by 20 CFR 655.737.

If an employer marks "Yes" the employer acknowledges that if it uses this application in support of a petition or extension of a petition of an H-1B nonimmigrant who is not exempt, it is required to comply with the Additional Employer Labor Condition Statements in Subsection 2 of section I with respect to all H-1B nonimmigrants supported by this application.

b. Subsection 2

All employers that are (1) H-1B dependent (as defined above) and/or (2) have been found to have committed a willful violation or a misrepresentation of a material fact during the five (5) year period preceding the date of this application (and after October 20, 1998), **must read and agree to statements (A) through (C) below and demonstrate that agreement by marking "Yes" in Subsection 2 of Section I of this application.** The employer agrees to develop and maintain documentation supporting labor condition statements (1) and (4) as specified in 20 CFR 655.738 and 655.739, and to make this document available to Department of Labor officials upon request. The employer also agrees to make available for public examination a copy of the labor condition application and necessary supporting documentation as specified in 20 CFR 655.760 within one (1) working day after the date on which the application has been filed with the Department of Labor. This documentation must be retained for public examination at the place of employment or the employer's principal place of business as specified in Section J of this form. The employer agrees:

- (A) **Displacement:** The employer will not displace any similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the date of filing a petition for an H-1B nonimmigrant supported by this application.
- (B) **Secondary Displacement:** The employer will not place any H-1B nonimmigrant employed pursuant to this application with any other employer or at another employer's worksite UNLESS the employer applicant first makes a bona fide inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker within the period beginning 90 days before and ending 90 days after the placement, and the employer applicant has no contrary knowledge.

If the other employer displaces a similarly employed U.S. worker during such period, the displacement will constitute a failure to comply with the terms of the labor condition application and the employer applicant may be subject to civil money penalties and debarment. See 20 CFR 655.738.

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- (C) **Recruitment and Hiring:** Prior to filing any petition for an H-1B nonimmigrant pursuant to this application, the employer took or will take good faith steps meeting industry-wide standards to recruit U.S. workers for the job for which the nonimmigrant is sought, offering compensation at least as great as required to be offered to the H-1B nonimmigrant. The employer will (has) offer(ed) the job to any U.S. worker who (has) applied and is equally or better qualified than the H-1B nonimmigrant

Under the Immigration and Nationality Act (INA) Section 212 (n)(1)(G)(ii), 8 U.S.C. 1182), this labor condition statement "C" does not apply to the employment of an H-1B nonimmigrant who is a "priority worker" (defined as a person with extraordinary ability, or outstanding professors or researchers, or certain multi-national executives or managers) within the meaning of Section 203 (b)(1)(A), (B), or (C) of the INA, 8 U.S.C. 1153.

4. Mark "Yes" or "No". The employer must agree to all four labor condition statements listed above #4 as (A) to (C) of Subsection 2 of Section I. Answer this question only if you marked "Yes" to either or both question one and two above in Section I indicating that you are either an H-1B dependent employer or a willful violator or both.

**Section J
Public Disclosure Information**

1. Please indicate whether the employer's required public disclosure information will be located at the employer's principal place of business **AND/OR** the place of employment.

**Section K
Declaration of Employer**

Note: If submitting this form non-electronically, the employer must sign and date the application prior to submission. If submitting this form electronically, the employer must sign and date the application immediately upon receipt of the certified application and before submission to USCIS. An attorney or agent should not sign this section unless the attorney or agent is an employee of the employer and has authority to sign as the employer.

1. Enter the last (family) name of the person with authority to sign as the employer.
2. Enter the first (given) name of the person with authority to sign as the employer.
3. Enter the middle initial of the person with authority to sign as the employer. In the absence of a middle name, enter N/A.
4. Enter the job title of the person with authority to sign as the employer.
5. The person with authority to sign as the employer must sign the application. Read the entire application and verify all contained information prior to signing.

The person with authority to sign as the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

**Section L
Preparer Information**

This section must be completed if the preparer of this LCA is a person other than the one identified in either Section D (employer point of contact) or E (attorney or agent) of this application. For example, an employee of the attorney (e.g., paralegal) would complete the LCA preparer section. If the employer or attorney/agent contact listed in sections D and E was the person preparing and submitting the LCA, then this section will be left blank.

1. Enter the last (family) name of the person preparing this LCA by or on behalf of the employer.
2. Enter the first (given) name of the person preparing this LCA by or on behalf of the employer.
3. Enter the middle initial of the person with preparing this LCA by or on behalf of the employer.

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4. Enter the Firm/Business name of the person with preparing this LCA by or on behalf of the employer.
 5. Enter the email address of the person with preparing this LCA by or on behalf of the employer. Format must be in the format [name@emailaddress.top-level](#) domain.

Section M
U.S. Government Agency User ONLY

Read this section. No entries required.

Section N
Signature Notification and Complaints

Read this section. No entries required.

Section O
OMB Paperwork Reduction Act/Information Control Number 1205-0310

Read this section. No entries required.

Appendix 4

Online Wage Library - FLC Wage Search Results

Tuesday, November 23, 2010 [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2010 - 6/2011. Your search returned the following:

Area Code: [41940](#)
Area Title: San Jose-Sunnyvale-Santa Clara, CA MSA
OES/SOC Code: 15-1032
OES/SOC Title: Computer Software Engineers, Systems Software
Level 1 Wage: \$41.30 hour - \$85,904 year
Level 2 Wage: \$50.54 hour - \$105,123 year
Level 3 Wage: \$59.79 hour - \$124,363 year
Level 4 Wage: \$69.03 hour - \$143,582 year
GeoLevel: 1

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

This wage applies to the following O*Net occupations:

15-1032.00 Computer Software Engineers, Systems Software

Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. Apply principles and techniques of computer science, engineering, and mathematical analysis.
O*Net™ JobZone: 4 -- Education & Training Code: 5-Bachelor's degree

Acknowledgment of Receipt of LCA by H-1B Nonimmigrant

**STATEMENT OF RECEIPT
OF CERTIFIED LABOR CONDITION APPLICATION
BY H-1B NONIMMIGRANT WORKER**

By signing this form, _____ (H-1B Employee Name) affirms that on or before the day s/he began work as an H-1B employee for _____ (Company Name), s/he was provided with a copy of the Labor Condition Application as certified by the Department of Labor that was filed in support of _____'s (H-1B Employee Name) H-1B nonimmigrant petition.

Employee Signature

Date Signed

Actual Wage Memorandum Sample

20 CFR §655.760(3)

Occupation: Software Engineer (level II)

Location: San Jose, California

I confirm that the salary for the above referenced position for which the attached Labor Condition Application has been certified, is at least the “actual wage” paid to all other employees with similar duties, experience and qualifications employed in this position. Our methodology for determining salaries for this position is as follows:

A job description and job requirements are created for open positions. The responsibilities, experience, special knowledge, and education requirements for these positions are matched to the appropriate survey listing provided by the most recent Radford Salary survey and a range is determined based on this survey. Specific salaries are then determined within this range based on the following factors:

- level of education;
- years of experience in the field;
- specific job responsibility;
- specialized knowledge;
- degree of independent responsibility;
- market factors;
- nature of the duties involved; and
- other applicable criteria.

This procedure is applied on the same basis for all potential new hires of the company without regard to immigration status.

Please note that the employer applies the same methodology to all U.S. and H-1B employees in this classification when determining the actual wage, based upon the above-referenced criteria.

Joe Bloggs

Vice President Human Resources
ABC, Inc.

Notification Confirmation Sample

By signing this statement, I, Joe Bloggs, hereby attest to the following:

- 1) Notice of this Labor Condition Application has been provided to workers employed in the named occupation in the following manner:

Check one:

a. _____ Notice of the filing of this Labor Condition Application has been provided to workers through the bargaining representative. The name of the bargaining representative is: _____;

or,

b. There is no such bargaining representative. Notice of the filing of this Labor Condition Application has been provided through physical posting in two conspicuous locations where H- 1B nonimmigrants will be employed for a period of at least ten business days. This Labor Condition Application was posted at Breakroom and Lundhroom, for the period 9/15/2010 through 9/25/2010.

or,

c. _____ There is no such bargaining representative. Notice of the filing of this Labor Condition Application has been provided through electronic notification to employees in the occupational classification for which H-I B nonimmigrants are sought.

AND

- 2) Each H-I B nonimmigrant employed pursuant to the application will be provided with a copy of the certified Form ETA9030, Labor Condition Application, and a copy of ET A9035CP if requested, no later than the date the H- 1 B nonimmigrant reports to work at the place of employment.

Signed:

Name of Employee Representative: Joe Bloggs

Title of Employee Representative: Vice President Human Resources

Date: 9/26/2010

Benefits Memorandum Sample

20 CFR §655.760(6)

Attached is an excerpt detailing all benefits offered to employees of _____ (Company Name). All employees must meet the company's eligibility requirements. There is no difference between the benefits offered to H-1B professionals and other full-time employees. Eligibility for certain benefits may be made based upon factors such as years of service and professional level as described in the benefits plan summary.