U.S. Department of Labor
Employment and Training Administration
Office of Foreign Labor Certification
Frequently Asked Questions
H-1B, H-1B1, and E-3 Programs
August 24, 2023

1. **I am an employer with an approved Labor Condition Application (LCA) for H-1B, H-1B1, or E-3 workers. Can I move workers to worksite locations that were unintended at the time I submitted the LCA to OFLC for processing? Do I need to file a new LCA if the worksites are located in an area of intended employment listed on the certified LCA? If I do not need to file a new LCA, what are my notice obligations for moving the workers to the new worksite locations?**

   If the worker is simply moving to a new job location within the same area of intended employment, a new LCA is not generally required. *See* 20 CFR 655.734. Therefore, provided there are no changes in the terms and conditions of employment that may affect the validity of the existing LCA, employers do not need to file a new LCA. Employers with an approved LCA may move workers to other worksite locations, which were unintended at the time of filing the LCA, ***without needing to file a new LCA***, provided that the worksite locations are within the same area of intended employment covered by the approved LCA. Under 20 CFR 655.734(a)(2), the employer must provide either electronic or hard-copy notice at those worksite locations meeting the content requirements at 20 CFR 655.734(a)(1) and for 10 calendar days total, unless direct notice is provided, such as an email notice. Notice is required to be provided on or before the date any worker on an H-1B, H-1B1, or E3 visa employed under the approved LCA begins work at the new worksite locations.

   It is important to note that if the move includes a material change in the terms and conditions of employment, the employer may need to file an amended petition with the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS).

   Employers with an approved LCA may also move H-1B workers to unintended worksite locations outside of the area(s) of intended employment on the LCA using the short-term placement provisions. As required for all short-term placements, the employer's placement must meet the requirements of 20 CFR 655.735. The short-term placement provisions only apply to H-1B workers.

2. I intend to file a Labor Condition Application (LCA) for the H-1B, H-1B1, or E-3 program. Can I provide electronic notice of the LCA filing?

On or within 30 days before the date of an LCA filing, employers must provide notice of the LCA filing to its employees in the occupational classification in the area(s) of intended employment. Where a bargaining representative exists, the employer must provide notice of the LCA filing to the bargaining representative.

In the absence of a bargaining representative, the employer may provide hard-copy or electronic notice to its employees which must be available to employees for a total of 10 calendar days. The hard-copy notice must be posted in two conspicuous locations at each worksite (or place of employment). In general, employers should also be aware that the regulations allow employers to provide electronic notice of an LCA filing. For electronic notice, employers may use any means ordinarily used to communicate with its employees about job vacancies or promotion opportunities, including its website, electronic newsletter, intranet, or email. If employees are provided individual direct notice, such as by email, notification is only required once and does not have to be provided for 10 calendar days.

The notice must be readily available to the affected employees. The notice must also contain the required content and comply with the notice provisions of 20 CFR 655.734. The employer must document and retain evidence of the notice that it provided in its public access file in accordance with 20 CFR 655.760. Further, the employer must provide a copy of the certified LCA to the H-1B, H-1B1, or E-3 worker(s) no later than the date the nonimmigrant worker reports to work at the worksite location.

3. I have an approved Labor Condition Application (LCA) for H-1B workers. Can I move H-1B workers to a new worksite that is located outside the area of intended employment on my certified Labor Condition Application (LCA)?

An employer with an approved Form ETA-9035, *Labor Condition Application for Nonimmigrant Workers* (LCA), may place an H-1B worker at a new worksite located outside of the area(s) of intended employment certified by the Department of Labor's (Department) Office of Foreign Labor Certification (OFLC), without having to file a new LCA, ***if*** the employer meets the conditions for short-term placement. The conditions are fully discussed in the H-1B regulations at 20 CFR 655.735 and summarized as follows:

- The employer is in compliance with wages, working conditions, strike requirements, and notice for worksites covered by the approved LCA;

- The employer's short-term placement is not at a worksite where there is a strike or lockout;
- For every day the H-1B worker is placed outside the area of intended employment, the employer continues to pay the required wages; and
- The employer pays lodging costs, costs of travel, meals, and expenses (for both workdays and non-workdays).

Under the short-term placement provisions, an employer may place the H-1B worker at the new worksite location for up to 30 workdays in one year and, in certain circumstances, up to 60 workdays in one year. Employers will need to determine, on a case-by-case basis, whether the 30-workday and/or 60-workday provisions may apply. The short-term placement provisions only apply to H-1B workers; not H-1B1 or E-3 workers.

The area of intended employment is the area within normal commuting distance to the place of employment; there is no rigid measure of distance for "normal commuting distance." Generally, if an H-1B worker normally commutes from his or her place of residence to the worksite(s) on the approved LCA, the worksite(s) will be considered within commuting distance. If the worksite is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance, even if it crosses state lines. Accordingly, H-1B workers may be employed at a worksite within an MSA without the employer filing a new LCA and without the employer relying on the short-term placement provisions. It is important to note that if the move includes a material change in the terms and conditions of employment, the employer may need to file an amended or new petition with the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS).

Additionally, employers retain the option of filing a new LCA, at any time, covering new worksite(s) that are located outside the area(s) of intended employment or to make other changes to the terms and conditions of the original LCA. Under the Department's H-1B regulations at 20 CFR 655.760, employers must document and retain evidence in their files demonstrating compliance with all LCA requirements. If an employer files a new LCA covering additional worksites outside the area of intended employment listed on the original LCA, or materially changes the terms and conditions of employment, the employer would need to file an amended or new H-1B petition with USCIS. Employers should consult DHS regulations and USCIS guidance regarding when an amended or new petition must be filed: https://www.uscis.gov/sites/default/files/document/memos/2015-0721_Simeio_Solutions_Transition_Guidance_Memo_Format_7_21_15.pdf.

Further, employers are reminded that they attest with the Form ETA-9035, section G(2), that the employment of H-1B, H-1B1 or E-3 nonimmigrant workers in the named occupation will not adversely affect the working conditions of similarly employed U.S. workers, and that nonimmigrant workers will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers similarly employed. *See* 20 CFR 655.732. This means that if an employer is offering H-1B workers the flexibility to telework from their home that is within the area of intended employment, the employer must offer those same flexibilities to its U.S. workers similarly employed. Additionally, if the employer is offering to move the H-1B worker to a new location outside of the area of intended employment, the employer must offer the same option to its U.S. workers similarly employed.

Workers or employers who have questions, or would like to file complaints with the Wage and Hour Division (WHD) should visit www.dol.gov/whd/, submit an inquiry online at https://webapps.dol.gov/contactwhd/Default.aspx, or call 1-866-487-9243. Callers will be directed to the nearest WHD office for assistance. WHD staffs offices throughout the country with trained professionals who have access to interpretation services to accommodate more than 200 languages. Specific information on how to file a complaint is available on WHD's website. All assistance from WHD is free and confidential.