

Guidance for Supervisors H-1B Temporary Employment Status

Eastern Washington University may sponsor an international worker to work for the University on a temporary work visa known as an H-1B visa. H-1B status is defined as a nonimmigrant employment authorization category applicable to an “alien who is coming temporarily to the United States to perform services...in a specialty occupation.”

What positions are eligible for H-1B status employees?¹

Eastern Washington University may seek H-1B status on behalf of international workers with bachelor degrees, master’s degrees or Ph.Ds. who are in specialty occupations. A professor at an institutional of higher education is always considered a specialty occupation. According to U.S. Immigration regulations, a specialty occupation is defined as an occupation that requires “(a) a theoretical and practical application of a body of highly specialized knowledge, and (b) attainment of a baccalaureate or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” INA §214(i)(1)(A). EWU does not sponsor H-1B status for part time employees.

What Federal agencies will be involved in the H-1B application process?

Applications for an H-1B will involve possibly three federal agencies. First, the United States Department of Labor (U.S.D.O.L.) will approve a labor condition application approving the employer’s payment of wages to the employee as well as that no harm will come to the U.S. workforce from hiring the alien. Next, the United States Citizenship and Immigration Service (U.S.C.I.S.) will grant the employee status as a non-immigrant in the category of H-1B as a professional in a specialty occupation. Finally, if necessary, the United States Department of State (D.O.S.) will issue a visa stamp in the alien’s passport which is necessary for entering the U.S. and which must be obtained at an American consulate outside the country if the potential employee is outside of the country when the status is granted. If the employee is inside the country, then when s/he next travels outside the country, they will be required to get the visa stamp to return.

How long is the application process?

EWU departments and colleges should allow a minimum of four to five months to administer H-1B applications which require extensive documentation and are processed by the University’s Human Resources Office in consultation with the University’s assigned legal counsel.

What is the duration of the H-1B status?

The H-1B status may be obtained for an initial period of up to three years and may be extended up to a maximum of six years. Employees must leave the U.S. at the end of the six years for a period of 365 days before they can return to the U.S. in H-1B status again, unless during that time they apply to change their status to an immigrant or other non-immigrant classification. Once the six years is up, the employee has ten (10) days to leave the country or change status to another legal category before they will be considered “out of status”. Typically the duration for

¹ Please note that provisions are subject to change so always check with HR related to specific matters.

classified, exempt and special faculty employees is one year; tenured/tenure track faculty is two years. Therefore, it may be necessary to apply several times over a six year period to keep the alien employed in H-1B status.

Requirements of U.S. Department of Labor regarding H-1B applications:

Eastern Washington University must file a Labor Condition Application with the U.S. D.O.L. as a prerequisite to all H-1B applications. For approval the employer must attest that it will: pay 100 percent of the “prevailing wage” for the occupation and the “actual wages” paid to similar situated employees; and provide working conditions for the H-1B employee that will not adversely affect the working conditions of workers similarly employed in the area; that there is no strike or labor dispute afoot; and that notice of the filing was provided to the bargaining representative or if there is no bargaining representative, it has posted notice of filing in at least two conspicuous places of employment for a period of ten days.

Job Duties and/or Location:

H1-B applications are location and duty specific. Departments must ensure that they are providing accurate location and duty information at the beginning of the process. Changes in location and duties may impede the ability to obtain approval of an H-1B application, and could result in the need for an amended and/or new H-1B application. Departments should contact Caren Lincoln at the initial stage of discussions regarding location and/or duty changes that could affect an employee on an H-1B.

H-1B fees:

Service and processing fees “connected to the performance of the H-1B functions which are required to be performed by the employer” are considered to be “employer business expenses,” pursuant to 20 CFR 655.731(c)(3)(iii)(C)(12). Therefore, they must be paid by the employer.

*U.S. Citizenship and Immigration Services Processing Fees

\$460 -- Form I-129 filing fee (application for an H-1B)

\$500 -- Fraud Fee (one-time fee for new employees only)

\$1,410 --Premium Processing Fee (expedited processing). (This is an optional fee and must be approved by the appropriate Vice Presidential unit and paid by hiring department. An employee can request and pay the premium processing fees for his/her personal convenience).

*Fees are subject to change.

How to initiate the H-1B application process?

Departments and colleges can initiate the H-1B application process when an offer of employment has been made by contacting the Human Resources Manager, Caren Lincoln at clincoln@ewu.edu. Human Resources will notify the University’s assigned legal counsel who will provide an immigration questionnaire for the selected candidate. The questionnaire and requested documentation will be used to identify the type of immigration visa needed. While the H-1B visa is the most common, the University’s assigned legal counsel will identify the most appropriate visa option.

Can a job candidate apply for an H-1B without the department/college's involvement?

No, Eastern Washington University, as the employer, must petition U.S.C.I.S. for the status with the employee as the beneficiary.

If, however, an employee is on an Optional Practical Training (OPT) visa subject to his/her completion of studies in the U.S and they have been issued an employment authorization document (EAD), s/he can begin work for the University and may potentially extend his/her period of eligibility at their existing institution. The University can then timely file an H-1B visa to become effective when the EAD expires.

Can my dependents be covered under my H-1B?

Eastern Washington University can submit, as a courtesy, an H-4 for dependents with the H-1B petition. The cost of processing the H-4 (currently \$370) are the responsibility of the employee.

Typical documents needed from prospective employee for immigration:

- Current CV or resume
- Copy of complete passport biographical page, showing picture and validity dates, as well as any renewal pages
- Copy of the approved waiver of Two-Year Home Country Residency Requirement (if currently in J-1 or J-2 status and subject; if not subject, include a copy of visa page in passport)
- Copy of diplomas. If the degree(s) was attained outside the U.S., a certified translation and evaluation must accompany the diploma. Evaluations may be obtained from certified credential evaluators.
- Copy of all I-20's (if F-1 or F-2 status); DS-2019 (if J-1 or J-2 status); I-797 (if currently in H-1 status); or H-4 approvals (if in H-4 status)
- Copies of W-2 forms and/or 1099 forms and three most recent pay stubs
- Copy of most recent form I-94
- Copy of EAD (if applicable);
- Information on dependents to include marriage license, birth certificate(s), and passports.

Incomplete packets will delay processing

How long does it take to get the H-1B approval?

Processing times for H-1B varies on a case-by-case basis. Unless premium processing is utilized, departments and colleges are encouraged to allow at least 180 days, from the time a request is submitted to the Human Resources Office, to the start date. Processing times can be shorter for candidates currently in the United States on a visa through another employer/school. Departments and colleges must consider the following factors in considering a reasonable start date and in determining whether premium processing may be required:

- An employee's personal or work related travel itineraries

- Expiration of current visa status, gaps in current work authorization including an employee changing to H-1B status
- Potential delays caused by requests for more evidence from the U.S. D.O.L. or U.S.C.I.S.
- Cases in which the individual is currently outside of the U.S. or will be required to travel outside of the U.S. before beginning employment
- Pre-filing preparation and processing required for Human Resources (approximately 1 month)
- Processing time for U.S.C.I.S. and U.S.D.O.L. (approximately 3 to 4 months)

Since most of the factors which impact the timing of the H-1B approval are outside the control of the University, Departments and Colleges must allow plenty of time to complete the H-1B process. If an earlier start date is necessary, then Premium Processing should be considered. This service is an additional cost of \$1,410 and must be paid by the Department or College if the request is for the benefit and convenience of the University. The adjudication of applications submitted for premium processing is 15 days from the date the application is received by USCIS. Premium processing is not available for pre-filing preparation by the U.S.D.O.L.

No representations will be made related to Permanent Residence (Green Card)

Departments and colleges should inform candidates that obtaining H-1B status on their behalf does not obligate Eastern Washington University to sponsor the employee for permanent residence. Further, decisions related to sponsorship of permanent residence are reserved until after the University has had a meaningful opportunity to observe and evaluate the performance of an employee.

What happens if employment ends before the end of the expiration of an EWU sponsored H-1B visa?

If the University ends the beneficiary’s employment before the expiration of the issued H-1B visa, the University must pay the reasonable costs of return transportation of the beneficiary “abroad” (i.e. the employee’s last place of foreign residence) unless the employee voluntarily leaves employment. The University also must inform the U.S. C.I.S. and U.S.D.O.L. within ten days of the employee leaving employment regardless of whether departure is voluntary or involuntary.

Employee Responsibilities

Employees on an H-1B status are responsible for complying with rules governing their H-1B employment including expectations provided by the Immigration Attorneys with their H-1B packet. Actions by the employee that jeopardize their immigration status could result in immediate termination. Employees are required to notify the HR Services Manager immediately of any issues regarding their H-1B and/or other immigration status.

Who should I contact if I have questions or need assistance?

Contact Human Resources at 509-359-2381.