
Prevailing Wage

All employers wishing to sponsor H-1B employees must comply with federal regulations regarding fair wages by paying the Department of Labor (DOL) prevailing wage, which is noted on the employee's Labor Condition Application (LCA), or the actual wage whichever is higher. These DOL regulations are designed to protect U.S. workers by requiring employers to attest that no U.S. workers are displaced by the hiring of any H-1B employees and that there are no strikes or lockouts. The regulations also prevent exploitation of foreign workers by ensuring that their wages are not lower than other workers in similar positions at the same employer.

The first step in any H-1B petition (the initial H-1B or an extension) is to demonstrate that the H-1B employee is being paid the "actual wage" or "prevailing wage," whichever is higher. The actual wage is the amount being paid to scholars employed by Yale with similar experience and qualifications for that specific position in the particular department, laboratory, or center. The prevailing wage is the salary rate being paid in academic institutions in a particular metropolitan statistical area for the same occupation. **If the employee's proposed salary is below the prevailing wage (or actual wage whichever is higher), OISS cannot continue with the H-1B request. Finally, it is important to note that prevailing wages can change significantly with the annual release of new DOL data on July 1st.**

Record-Keeping and Compliance

Records regarding the prevailing wage will be kept at the OISS with other documents required by the DOL. Should there be a government investigation, Yale will need to produce the additional actual wage evidence, including payroll records of those workers similarly employed in a particular department or laboratory. The penalties for failure to comply with DOL regulations are severe: fines may be imposed, back pay of wages required, and the employer may be barred from hiring foreign nationals. Once OISS has determined that the H-1B employee will be paid at least the actual wage level or the prevailing wage level, whichever is higher, and that Yale is therefore in compliance with DOL regulations, OISS can proceed with the H-1B petition.

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