



DOL H-1B Audit Playbook



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Overview

The U.S. Department of Labor (DOL) conducts audits related to H-1B visas to ensure compliance with labor and immigration laws. H-1B visas are designed for foreign workers in specialty occupations and require employers to meet certain legal requirements. Employers engaging H-1B professionals and individuals in specialized occupations are legally obligated to file a Labor Condition Application (LCA) using the DOL Form ETA 9035E in accordance with regulatory guidelines. This playbook helps you understand DOL H-1B Audits and strategies to navigate through them.

Responsibilities of a H-1B Employer

By filling out and endorsing the LCA, the employer confirms a series of commitments referred to as "attestations." These attestations pertain to the employer's obligations towards H-1B nonimmigrant employees, encompassing matters such as compensation, working conditions, and the benefits to be extended to prospective H-1B workers integrated into the employer's workforce. According to the Department of Labor, each employer seeking to hire an H-1B nonimmigrant worker has the following responsibilities:

- 1 By completing and signing the LCA, the employer agrees to several attestations regarding an employer's responsibilities, including the wages, working conditions, and benefits to be provided to the nonimmigrant.
- 2 The employer shall make the LCA and necessary supporting documentation available for public examination at the employer's principal place of business in the U.S. or the place of employment within one working day after the date on which the LCA is filed with the DOL.
- 3 The employer may then submit a copy of the approved LCA to U.S. Citizenship and Immigration Services (USCIS) with a completed petition requesting H-1B classification.
- 4 The employer shall not allow the nonimmigrant worker to begin work until USCIS grants the worker authorization to work in the U.S. for that employer; or in the case of a nonimmigrant who is already in H-1B status and is changing employment to another employer, until the new employer files a petition supported by a certified LCA.
- 5 The employer shall maintain documentation to meet its burden of proof with respect to the validity of the statements made in its LCA and the accuracy of information provided, if such statement or information is challenged.
- 6 The employer shall also maintain such documentation at its principal place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

Why do DOL H-1B Audits happen?

The DOL may investigate H-1B employers in response to complaints or concerns regarding potential violations of labor laws, including wage and hour regulations. Audits are usually triggered either when a current or former employee files a complaint with the DOL or when the DOL targets a specific industry for investigation. Some factors based on which the DOL may initiate an audit:

- Employee complaints
- Referrals from US embassies
- Random selection

Violations Checklist

Here's a list of violations that could attract a DOL H-1B Audit:

- 1 The employer provided inaccurate or fraudulent information on the Labor Condition Application (LCA).
- 2 The employer neglected to remunerate nonimmigrant worker(s) with the higher of either the prevailing wage or the actual wage.
- 3 The employer omitted payment to nonimmigrant worker(s) for periods of leave initiated by the employer or for time needed to obtain a license or permit.
- 4 The employer made wage deductions from nonimmigrant worker(s) that caused their earnings to dip below the mandated threshold.
- 5 The employer failed to furnish nonimmigrant worker(s) with working conditions equivalent to those of U.S. worker(s), or the employment of nonimmigrant worker(s) negatively impacted the working conditions of U.S. worker(s).
- 6 The employer violated the "no strike/lockout" requirement.
- 7 The employer did not give notice of its intent to hire nonimmigrant worker(s) or failed to provide a copy of the LCA.
- 8 The employer failed to maintain and make available the LCA and requisite documents for public inspection.
- 9 H-1B dependent/willful violator employers displaced U.S. worker(s) within their own workforce or at another employer's work location.
- 10 H-1B dependent/willful violator employers failed to hire U.S. worker(s) who were equally or better qualified for the job.

What happens during an audit?

The DOL Wage and Hour Division of the USCIS Fraud Prevention Unit or both will review all aspects associated with H-1B program compliance during an audit. The DOL Audit or LCA investigation will focus on, but not be limited to, the following issues:

- 1 **Wages** – are the H-1B employees paid and was the pay similar to that of the other company employees?
- 2 **Treatment** – are the H-1B employees otherwise treated similarly to other employees?
- 3 **LCA specifics** – has the company accurately completed the LCA? Is the H-1B employee working in the same location listed on the LCA and under the same job title?
- 4 **Displacement and Recruitment issues** – Is the employer H-1B dependent? Has a U.S. worker been replaced by an H-1B employee? Did the H-1B employer attempt to recruit an U.S. employee if they were required to do so?
- 5 **Is the Public Access File properly** maintained and accessible? Can the employer immediately provide the required documents to an interested party? Did the proper postings take place at the proper places?



Requested Documentation

In the course of the DOL investigation, the DOL officers generally request the following documentation from the company:

- Complete Public Access Files including postings and certifications.
- Payroll records including Federal and State Return Filings.
- List of similarly situated U.S. workers and their wages.
- Complete copies of H-1B Petitions, including LCA, I-129 forms.
- Listing of differences in job duties between H-1B employees and non-H-1B employees.
- Listing of benefits and deductions for H-1B employees and non-H-1B employees.

Ways to Navigate DOL H-1B Audits

Things you can expect from a DOL H-1B Audit

- ✓ The auditor will review your organization's employment records, including payroll records, W-2 forms, and I-9 forms.
- ✓ The auditor may interview your employees.
- ✓ The auditor will look for violations of labor laws, such as wage and hour violations, discrimination, or retaliation. In the case of H-1B audits, specific visa program compliance will also be assessed.



Tips on how to prepare for a DOL H-1B Audit

- Keep employment records, including records of the wages of H-1B workers, hours, and job duties, up-to-date and in order.
- Make sure you understand your obligations under labor laws and H-1B visa program requirements.
- Train your employees on their rights and compliance with visa regulations
- Be ready to answer the DOL representative's questions, including those related to H-1B program compliance.
- Keep the required Public Access File up-to-date
- Avoid replacing US workers
- Ensure H-1B workers are being paid the prevailing wage
- Conduct self-audits from time to time

Steps to take during a DOL H-1B Audit

- Be cooperative with the DOL representatives, addressing both labor law and visa-related inquiries.
- Provide the auditor with all the required information, ensuring compliance with both labor laws and H-1B program rules.
- Answer the auditor's questions truthfully, addressing concerns related to both general labor compliance and H-1B program adherence.

Steps to take after a DOL H-1B Audit

- Review the auditor's report carefully, considering both labor law and H-1B program findings.
- If you disagree with any of the findings, you can file a written appeal.
- If you are found to have violated labor laws or H-1B program requirements, you will need to take steps to comply with the respective laws and regulations. This may include corrective actions for labor law violations and visa program corrections for H-1B compliance.
- You may also be required to pay back wages or fines or face penalties for violations of both labor laws and H-1B program rules.



Consequences & Penalties

Loss of Status: H-1B workers found to be out of status due to employer violations may face deportation or the inability to extend their visas.

- **Loss of Status:** H-1B workers found to be out of status due to employer violations may face deportation or the inability to extend their visas.
- **Fines and Penalties:** Employers can be subject to fines, penalties, and back wage payments if violations are identified. Employers found to be in violation of relevant laws and regulations may face monetary civil penalties from \$1,000 to \$35,000 per violation.
- **Future Eligibility:** Violations may impact an employer's ability to sponsor H-1B workers in the future. The employer may be barred from further participation in the H-1B program along with other immigrant programs.
- **Revocation of Petitions:** USCIS may choose to revoke previously approved H-1B petitions if non-compliance is discovered.

Staying Compliant

- Ensure full compliance with LCA regulations and engage in a program of meticulous record-keeping with regard to H-1B nonimmigrant employees.
- Ensure strict compliance with labor and immigration laws.
- Conducting self-audits, documenting your processes and audit findings, and taking corrective actions to remain compliant is crucial.
- COMPLIANCE IS THE KEY and there is no relaxation to it. Associating with qualified people who can guide you through the process is the key to your success.



Imagility's Comprehensive Compliance Solution

Transforming Compliance Challenges into Solutions

Imagility's Compliance solution provides a unified platform to manage all your compliance requirements, for each visa program including LCA filing and posting, public & private access files, maintaining I-9 Forms, remote I-9, FDNS, and more.



I-9 Compliance

Imagility I-9, is an intuitive Form I-9 compliance solution that can be directly accessed online or through an integration with your existing HR or payroll system.

- Ensures actual compliance with current employment eligibility legal requirements.
- Streamlines your entire I-9 process for both onsite and remote employees.
- Top features include automated workflows, document uploading, secure storage, remote I-9 agents and more.

LCA Compliance

Imagility lets you easily create and manage LCAs on the Platform.

- Post electronic LCAs for your H-1B, H-1B1 and E-3 hires.
- Create corresponding electronic PAFs and comply with U.S. Department of Labour regulations all in one place.
- Track availability of LCAs and posting acknowledgement.

Public and Private Access Files

Imagility takes care of storing public access files (PAFs) and private access files securely in one place, with appropriate access controls, helping you always stay audit ready.

- **Public Access Files** includes all LCA details with related documents like wage determination, US Workforce notification etc.
- **Private Access Files** include lists of all Beneficiaries, Company, Visa, and Petition type details.

FDNS Visits

Imagility covers FDNS information along with keeping track of FDNS visits.

- **All supporting documentation** submitted with the petition available anytime
- **Any additional documents or information** needed can be collated from petitioner or beneficiary profiles
- **FAQs** that provide support to prepare for a FDNS visit
- **Visit details** can be entered by Beneficiary and petitioner. All pending items can be brought to closure.



Imagility provides not only expert I-9 Compliance for all onsite and remote employees, but also comprehensive compliance support covering LCA, public and private access files and FDNS. In case of a DOL H-1B audit, with all compliance paperwork in one place and accessible at any time on Imagility, it will be a stress-free experience for employers.

Comprehensive Compliance Support for you to stay prepared!



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