



Public Access Files



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What is a Public Access File?

Employers sponsoring employees in the H-1B, H-1B1, and E-3 visa categories have an obligation to maintain a Public Access File (PAF) for each employee. As the name implies, these PAFs must be accessible to the public for review upon request. The employers are required to ensure that the PAFs are prepared within one working day of submitting the Labor Condition Application (LCA).

Under 20 C.F.R. [655.700(b)(1)(1)], there are several specific items that employers must include in the Public Access Files for nonimmigrant employees. These files should be readily accessible for inspection either at the principal place of business or at the place of employment. Employers must also continue to maintain this PAF for one year after the final day that the international employee is employed.

Why should an Employer maintain them?

Public Access File must be made accessible for inspection to any potentially interested parties, including auditors from the Department of Labor (DOL), who may request access without explicitly identifying themselves as auditors. Refusing access to the file can lead to the imposition of civil penalties. Understanding PAF management is critical to compliant management of international employees.



DOCUMENTATION TO BE INCLUDED IN PAF

Signed Copy of the Certified LCA

The Public Access File (PAF) must include a signed copy of the certified Labor Condition Application (LCA). Once certified and signed by the Department of Labor (DOL) certifying officer, the LCA must be signed by the authorized signatory for the employer.

Wage Rate Documentation

Documentation demonstrating the wage rate to be paid to the foreign national employee must be included in the PAF. In some cases, this requirement can be fulfilled by the LCA itself. However, if the LCA does not provide sufficient wage rate information, a signed letter or statement from the employer attesting to the intended wage may be acceptable.

Explanation of Wage Determination

The PAF must contain a comprehensive and clear explanation of how the actual wage for the position was determined. It should also include an explanation of how future salary increases will be calculated. Typically, this is done through a memorandum summarizing the wage determination system used.

Prevailing Wage Documentation

Employers are required to keep a copy of the documentation used to determine the prevailing wage in the PAF. This can be accomplished by including an explanation of the source and methodology used to determine the prevailing wage.

Notification Documentation

Evidence of meeting the notification requirements must be included in the PAF. This means including proof of the notice posted at the worksite or, if applicable, proof of notification to the collective bargaining representative.

Benefits Memorandum

The PAF should include a benefits memorandum outlining the employment benefits offered by the employer to its workers. For H-1B workers, the same benefits provided to U.S. workers must be offered. The memorandum should summarize the benefits available, such as bonuses, paid vacations, insurance plans, and stock options.

Requirements for Employers after Corporate Restructuring

In addition to the above items, there are additional evidentiary requirements following a corporate restructuring. In such cases, the employer must include a sworn statement from the responsible official of the new entity. The PAF must also include a list of all affected LCAs, the Federal Employer Identification Number (FEIN) of the new entity, and an explanation of its wage system.

Requirements for H-1B Dependent Employers and Willful Violators

H-1B dependent employers and willful violators have additional PAF requirements. If an employer has indicated that an employee is exempt, a list of all exempt employees must be included in the PAF. Additionally, the PAF should contain a summary of the recruitment methods used and the specific details of that recruitment process.

Use this Checklist on what to include in PAF

- Signed ETA Form 9035 Labor Condition Application
- ETA Form 9035 Cover Page Instructions
- Notice of Filing Confirmation (showing the employer has complied with the LCA notice requirement)
- Prevailing Wage Documentation
- Actual Wage Statement
- Summary of Benefits
- Summary of Corporate Change (if there is a qualifying corporate change during the employment, please contact your Meltzer Hellrung attorney)
- Additional Attestations and Documentation for “Dependent Employer” and “Willful Violators”.

What NOT to include in PAF

- A complete copy of the H-1B petition
- Company Financials
- Confidential Employee Information such as academic records, employment history, and disciplinary records.

Storing PAFs

The Public Access File (PAF) can be stored either digitally or physically at the employer's worksite. However, it should be kept separate from employees' personal files for privacy reasons. As the PAF is accessible to any member of the public upon request, it is crucial to protect employees' information that is not explicitly required to be maintained in the PAF. Therefore, documents related to company financials or employee details such as academic history, employment background, disciplinary action, etc., should NOT be included in the PAF.



DOL Audits

The Wage and Hour Division (WHD) of the Department of Labor (DOL) is responsible for ensuring H-1B petitioners' compliance with the wage obligations stated in the Labor Condition Application (LCA) and the maintenance of accurate Public Access Files (PAFs).

In addition to the checklist items mentioned above, the following information should be prepared for inspection, consisting of a list of every H-1B nonimmigrant worker employed during the specified investigation period and a report containing supporting documents for each worker:

- 1 The LCA submitted as part of the H-1B visa application.
- 2 Records of actual hours worked, the rate of pay, and gross earnings received, including copies of payroll documents.
- 3 An explanation of any deductions made from weekly wages or unpaid periods, supported by relevant documentation such as vacation requests, personnel memos, written authorizations for loans or salary advances, etc
- 4 Details of each work site where work was performed weekly, including the site's location (city and state), and the period of employment at each site.
- 5 Important dates, including dates of entry into the U.S., dates of hire/termination, dates of work commencement, and dates of payroll commencement.
- 6 Copies of any termination notices submitted to U.S. Citizenship and Immigration Services (USCIS) and the USCIS response.
- 7 The current or last known address and contact number of each H-1B worker.

- 8 Copies of the Petition for Nonimmigrant Worker (Form I-129 and H Supplement) for each H-1B worker employed during the specified period, as well as subsequent USCIS Approval Forms (I-797).
- 9 Any information regarding liquidated damages or penalties sought or collected from H-1B workers, including relevant contracts, demands, lawsuits, and settlement agreements.



FAILURE TO COMPLY

Failure to maintain proper PAFs can lead to:

- Increased scrutiny of your company's H-1B petitions,
- Potential monetary fines.
- Disqualification from participating in the H-1B program and other immigrant programs for a minimum of one year.

The DOL retains the right to audit employers at any time, and the Wage and Hour Division (WHD) may impose civil monetary penalties for violations, depending on their type and severity. Therefore, it is crucial for your company to be prepared for potential DOL audits or site visits by the Fraud Detection and National Security (FDNS) unit. The key solution lies in enhancing your company's preparedness for compliance to mitigate potential risks.

Recommended Practices

It is crucial to thoroughly review the requirements for maintaining the Public Access Files (PAFs) and establish a consistent and accurate process to ensure compliance.

- Designate an internal expert on PAFs and conduct regular audits.
- Have a plan in place in the event of a sudden visit from DOL officer
- Contact your attorney as soon as the officer arrives, and the DOL officer may allow your representative to document all questions and consult with the attorney before providing responses.



PAF COMPLIANCE THROUGH IMAGILITY

Imagility Compliance module helps HR teams record and track all compliance data in one place, ensuring smooth operations and a stress-free experience during audits. This helps HR teams maintain global talent without any immigration or compliance anxiety.

On the Imagility Platform, the Compliance menu provisions for storage, easy access, and viewing of public and private access files for every H-1B employee.

- Under Public access file you can view all the LCAs with details, and related files in one place to have them handy during any compliance audit. You can search based on the case number or SOC code.
- Private Access File page lists all Beneficiaries, Company, Visa, and Petition type details.
- If a beneficiary has more than one petition in the system, it shows as multiple records.
- You can search based on the beneficiary or company name.
- Each beneficiary record is displayed in a collapsed form and shows a list of related private access files with an option to view them when expanded

The screenshot displays the Imagility Compliance module interface. The top navigation bar includes links for DASHBOARD, TASKS, BENEFICIARIES, ATTORNEYS, REPORTS, SERVICES, DATA SETUP, COMPLIANCE, ADMIN, and RESOURCES. The main section is titled 'Compliance Info' with the subtitle 'Manage all the compliance data and keep your data compliant'. On the left, there is a sidebar with links for Public Access File, Private Access File, I-9 Forms, FDNS Q&A, and FDNS Visit. The main content area is titled 'List of LCA' and features a search bar for 'Search, Case no. / SOC code'. Below the search bar is a table with the following columns: ID, Case No., SOC Job Title, SOC Code, Visa Type, Company Name, Start, End, Status, and Withdrawn. The table contains two rows of data. The first row has ID 171, Case No. I-200-20132-559290, SOC Job Title Software Developer, SOC Code 15-1132.00, Visa Type H1-B, Company Name Visa Inc, Start 01-Oct-2021, End 31-Mar-2023, Status Assign, and Withdrawn 14-Mar-2021. The second row has ID 184, Case No. I-200-20191-704811, SOC Job Title Software Developer, SOC Code 15-1132.00, Visa Type H1-B, Company Name Visa Inc, Start 01-Aug-2021, End 30-Dec-2023, Status Assign, and Withdrawn. At the bottom right of the table, there is a pagination control showing 'Items per page: 25' and '1 - 2 of 2'.

ID	Case No.	SOC Job Title	SOC Code	Visa Type	Company Name	Start	End	Status	Withdrawn
171	I-200-20132-559290	Software Developer	15-1132.00	H1-B	Visa Inc	01-Oct-2021	31-Mar-2023	Assign	14-Mar-2021
184	I-200-20191-704811	Software Developer	15-1132.00	H1-B	Visa Inc	01-Aug-2021	30-Dec-2023	Assign	



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