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How Can An H-1B Employee Change Job Locations?

H-1B employees are subject to the following rules governing permissible work locations:

- They can work at any location within their approved MSA simply by having the employer place a notice on the wall at the new work location on or before the day they begin work there.
- To work at a location outside of the MSA, the employee must have an amended petition approved before work at the new location begins. This takes 30 days.
- If the employer needs the employee to start immediately at a location outside of the MSA, the employer may place them there only if all of the following apply:

(1) It does not already have an LCA for that occupation at any location in the new MSA;
(2) It continues to pay the required wage under the LCA for the original work location;
(3) It pays all lodging, travel, meals, and related expensed during the placement at the new location (even on non-working days);
(4) It does not employ them at the new location for more than 30 days in the aggregate per year; and
(5) If the employee will work for more than 30 days at the new location, the employer either has the approved amended H-1B petition in hand by the 30th day or it returns the worker by that time to their previous location until the approval arrives.

The foregoing guidelines are based on the following considerations relating to H-1B employees. In order for an H-1B petition to be filed with the USCIS for a foreign national worker, a Labor Condition Application or "LCA" must first be filed with the USDOL. An LCA is valid for any location within the Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") in which the place of employment is located, or within "normal commuting distance" of that location. For example, if an LCA states that the H-1B employee's place of employment will be Boston, then the LCA would cover (1) all locations within the MA/NH PMSA and (2) any other locations within a normal commuting distance. The term "MSA" as used in this article includes normal commuting distance.

The LCA must specify the specific work location where the work will be performed. If an individual will work in multiple locations, then an LCA must be filed for each such location. When the H-1B petition is approved, the employee may then work at any location for which an LCA was filed. (Unlike an H-1B, an employee in TN, L-1, E-1, or E-2 status can work in the occupation at any location, moving from one to another without prior notice to or approval by the USDOL or USCIS.)

Whenever a new work location comes into play, steps must be taken to ensure that the proper clearances have been obtained before work begins. When an employer needs to move an H-1B employee to a new location for which an LCA was not filed prior to the filing of the H-1B petition for that employee, one of three outcomes can occur:

1. **If the new location is located within the same MSA** as any of the LCAs already filed for that H-1B employee, then the employee can move to that new location without any paperwork being filed with the government. Instead, the employer simply must post a 10-day notice on the wall at the new workplace before or at the time that the work begins;
2. **If the new work location is not within the same MSA**, then the employer must file an LCA for the new location and must then file an amended H-1B petition based on that location, with the employee beginning work at the new location only after the amended H-1B petition is approved. This typically takes approximately 30 days to accomplish; or
3. **If option 1 above does not apply and the employer cannot wait to accomplish option 2 before relocating the employee**, then the employer can place the worker at the new location immediately **if** the "short-term placement" rule applies. This rule allows the employee to be placed at a new location for up to 30 days per year* in the aggregate if:

    - The employer has met all obligations under its LCA for the worker at the original work location;
    - No strike or lockout exists at the new location in the occupation of the worker (such as "Pharmacist");
    - The employer continues to pay the required wage based on the original LCA and also pays all lodging, travel, meals, and incidental or miscellaneous expenses associated with the H-1B worker's stay at the new location, for both workdays and non-workdays; and
    - The employer does not already have an LCA for another employee in the occupation (such as "pharmacist") in the new MSA. (Note: this means the entire MSA and not just the intended work location.)

Short-term placement cannot be used for the initial assignment with the employer, as an H-1B worker must first be placed at a regular worksite listed on the LCA used for the H-1B petition. The term "workday" means any day on which an H-1B worker performs any work at any worksite within the short-term area of employment. Workdays counted toward the limit may be nonconsecutive, and may be at different specific worksites. Non-working weekends, holidays, or other non-workdays do not count toward the 30-day maximum, even if the H-1B worker spends them in the area of the short-term placement. When an H-IB worker has reached the aggregate annual limit of "short-term placement" workdays in an area of employment, the employer may no longer employ that person there. As a practical matter, an employer should therefore file a new LCA and H-1B amendment as soon as possible for the new location.

*To qualify for a 60-day short-term placement, an employer must also show that the H-1B worker (a) maintains an office or work station at his or her permanent worksite, (b) spends a "substantial amount of time" at that permanent worksite during a one-year period, and (c) has his or her U.S. residence or place of abode in the area of that permanent worksite and not in the area of the short-term worksite.