

MARCH 21, 2020

*If you have any questions  
about this Advisory,  
please contact:*

**NAJIA S. KHALID**  
203.498.4314  
nkhalid@wiggin.com

**ASHLEY F. MOORE**  
203.498.4372  
amoore@wiggin.com

## DOL PROVIDES GUIDANCE ON NOTICE REQUIREMENTS DURING COVID-19 FOR H-1B VISA COMPLIANCE

On March 20th, the Department of Labor (DOL) released an FAQ guide for complying with notice requirements for H-1B visa petitions and underlying Labor Condition Applications (LCAs) during COVID-19. The contents are summarized below with additional guidance from the American Immigration Lawyers Association (AILA).

### 1) Complying with DOL Notice Requirements During COVID-19

When seeking to employ an individual pursuant to H-1B visa status (an "H-1B worker"), DOL regulations require LCA filing notice to be provided prior to H-1B visa petition submission and **prior to any changes** in worksite location. The notice requirement is to alert workers of the H-1B employment and provide an opportunity to file complaints with the DOL.

Employers must provide notice to the applicable bargaining representative for employees who are in the same geographical area of employment and who fall within the same occupational category as the H-1B worker. If there is no bargaining representative, then the employer must post an LCA filing notice or the LCA in two "conspicuous locations" at the H-1B worker's place

of employment. The postings must be visible for 10 days. DOL generally uses a good faith compliance standard in enforcing the regulations.

Although notice is often provided through a hard-copy physical posting at the worksite(s) where the H-1B worker will be employed, if remote worksites are being used and workers are not physically present, then an employer may **provide notice to workers electronically** through its "website, electronic newsletter, intranet, or email." If employees lack computer access, **copies of the notice may be mailed to each worker**. If employees are provided individual direct notice, then notice is only required once and need not be provided for 10 days.

### 2) LCA Compliance When Relocating H-1B Workers During COVID-19

An H-1B worker's employment is specific to the worksite listed on the LCA and requires notice. To comply with DOL regulations, employers must act prior to changing the worksite location.

If there are **no material changes** to the terms of H-1B employment (e.g., job duties, salary, etc.) and a new/home worksite falls **within the same geographic area**

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**and normal commuting distance** of the original worksite noted on the LCA, then the certified LCA or a posting notice must be posted in two conspicuous places at the new/home worksite for 10 days. Posting must occur **prior to** the H-1B worker commencing employment at the new/home worksite. However, given COVID-19 impact, DOL's OFLC stated that "notice will be considered timely when [the posting is] placed **as soon as practical and no later than 30 calendar days after the worker begins work at the new worksite location.**"

If the new/home worksite falls **outside of the geographic area and normal commuting distance** of the original worksite noted on the LCA, then the following rules may apply:

- There is a DOL **Short-Term Placement Rule** whereby employers may place H-1B workers at a worksite not listed on its approved LCA for **up to 30 workdays in aggregate each calendar year** (if some days have already been used under this option, then an employer will not have the full 30-day period for COVID-19 purposes).
- "Workdays" are days worked and do not include weekends and holidays

(30 days could equate to at least six weeks of work at a temporary location).

- If using short-term placement, employers must also **pay the H-1B worker for "the actual cost of lodging (for both workdays and non-workdays)" and "the actual cost of travel, meals and incidental or miscellaneous expenses (for both workdays and non-workdays)."**

If there **are material changes** to employment, or the COVID-19 quarantine lasts longer than 30 workdays and the short-term placement rule is exhausted, then the **employer must file a new LCA with the DOL to cover the new/home worksite and comply with all LCA notice requirements. This means that an amended H-1B petition must also be filed with USCIS.**

Associate **Ashley Moore** contributed to this briefing.

*Wiggin and Dana's Immigration and Nationality Law and Compliance Practice Group will continue to provide briefings as more information becomes available. Please contact the practice group Co-Chair, **Najia Khalid**, at 203.498.4314 or [nkhalid@wiggin.com](mailto:nkhalid@wiggin.com) if you have any questions.*