

Fact Sheet #62B: Who is an H-1B employer?

This fact sheet provides general information concerning the H-1B employer under the H-1B program. Special attestations applicable to H-1B-dependent and willful violator employers sunset on October 1, 2003, but were restored effective March 8, 2005 by the H-1B Visa Reform Act of 2004.

An H-1B employer is any entity (person, firm, corporation, contractor, or other association or organization) which files (1) a Labor Condition Application (LCA) (Form ETA 9035 and/or ETA 9035E) with the Department of Labor's Employment and Training Administration and (2) a Petition for a Nonimmigrant Worker (Forms I-129/I-129W) on behalf of an H-1B nonimmigrant with the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service). This definition applies in all situations, whether or not the H-1B employer is H-1B-dependent (see [WH Fact Sheet #62C](#)).

Is there another definition of employer?

Yes. The Immigration and Nationality Act has a different definition of employer for the sole purpose of determining H-1B-dependency status. Under this special definition, an employer is an entity or multiple entities treated by the Internal Revenue Code as a "single employer," including a "controlled group of corporations," "partnerships, proprietorships, *etc.*, which are under common control," and "affiliated service group[s]."

Does one definition cancel out the other?

No. The IRC definition of "single employer" pertains solely to the determination whether or not an employer is H-1B-dependent (see [WH Fact Sheet #62C](#)).

Must a new LCA be filed if an H-1B employer undergoes a corporate entity change?

No. The successor entity generally need not file a new LCA provided the new entity agrees to assume the predecessor entity's obligations and liabilities under the existing LCA. This agreement must be in writing and included in the public access materials.

The successor entity must comply with the conditions of the LCA. For example the "new" employer must continue to comply with the attestations covering:

- Wages;
- Place(s) of employment;
- Strike/lockout;
- Notification;
- "Exempt" H-1B worker(s) (see [WH Fact Sheet #62Q](#)); and
- Dependency status.

Any new paperwork (e.g., LCA or petition) filed with the Department of Labor or USCIS must reflect the legal name of the successor entity.

A successor entity must file a new LCA under any one of the following conditions:

- The H-1B worker is in a different occupation than USCIS originally adjudicated; or
- The H-1B worker is at a job site not covered by the existing LCA.

All requirements listed above can be found in 20 CFR § 655 Subparts H & I and the Immigration and Nationality Act § 212(n).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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