

## **Fact Sheet #62O: Must an H-1B employer recruit U.S. workers before seeking H-1B workers?**

This fact sheet provides general information concerning recruitment required for use of the H-1B program.

The H-1B employer is not required to recruit U.S. workers, unless it is H-1B-dependent (see [WH Fact Sheet #62C](#)), a previous willful violator of H-1B requirements (see [WH Fact Sheet #62S](#)), or an employer receiving funding described in the Employ American Workers Act (EAWA) which hires a new H-1B worker during the period Feb. 17, 2009 through Feb. 16, 2011, (see [WH Fact Sheet #62Z](#)).

Such employers must take good faith steps to recruit U.S. workers for any job for which they seek H-1B workers.

### **Who is a “U.S. worker”?**

A “U.S. worker” is:

- any employee who is a citizen or national of the United States, or
- any alien who is lawfully admitted for permanent residence in the United States, is admitted as a refugee under § 207 of the Immigration and Nationality Act (INA), is granted asylum under § 208 of the INA, or is an immigrant otherwise authorized (by INA or by the Attorney General) to be employed in the United States.

### **What does the term “recruitment” mean?**

The term “recruitment” means the process by which an employer seeks to contact or to attract the attention of any person who may apply for any job that the employer is considering filling with an H-1B worker. Recruitment must take place before the LCA or petition is filed. Recruitment includes soliciting, receiving, considering, and reviewing applications.

### **What solicitation methods may an employer use in seeking to contact or to attract the attention of potential U.S. applicants for employment and to solicit applications from persons for employment?**

“Solicitation methods” that an employer may use are:

- Either external or internal to the employer’s workforce; or
- Either active (where an employer takes positive, proactive steps to identify potential applicants and to get information about its job openings into the hands of such persons), or passive (where potential applicants find their way to an employer’s job announcements).

### **What selection criteria must be used when recruiting U.S. workers?**

In conducting recruitment of U.S. workers, an employer must apply selection criteria which satisfy all of the following standards:

1. Legitimate criteria, meaning criteria which are legally recognized and do not violate any applicable laws;
2. Relevant to the job; and
3. Normal and customary to the type of job involved.

**An employer must recruit in “good faith.” What does this mean?**

An employer which recruits in good faith must offer fair and nondiscriminatory opportunities for employment to U.S. workers. U.S. workers must be given fair consideration for jobs. H-1B workers must not be favored over U.S. workers.

**What actions would constitute a prohibited “discriminatory manner” of recruitment?**

An action that would skew the recruitment process in favor of an H-1B nonimmigrant is prohibited.

**Who enforces the recruitment requirement for H-1B-dependent and willful violator employers?**

The Wage and Hour Division of the U.S. Department of Labor. Questions or complaints concerning these requirements should be directed to the nearest Wage and Hour Division District Office ([see http://www.dol.gov/whd/america2.htm](http://www.dol.gov/whd/america2.htm)).

**Must U.S. workers be offered jobs for which H-1B workers are sought?**

Yes. U.S. applicants must be offered such jobs in some circumstances. If the employer is H-1B dependent (see [WH Fact Sheet #62C](#)) or a willful violator of H-1B requirements (see [WH Fact Sheet #62S](#)), a U.S. worker who applies for a job for which an H-1B worker is sought must be offered the job if he/she is equally or better qualified than the H-1B applicant. These requirements also apply to an employer receiving funding described in EAWA who hires a new H-1B worker during the period Feb. 17, 2009 to Feb. 16, 2011 (See [WH Fact Sheet 62Z](#)).

**Who enforces the requirement for offering jobs to qualified U.S. applicants?**

Questions or complaints concerning any non-selection should be referred to the U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), which also administers several statutes concerning employment discrimination based on national origin, citizenship status, and immigration document abuse. OSC may be contacted at 950 Pennsylvania Avenue, NW, Washington, DC 20530, 1-800-255-7688 and <http://www.usdoj.gov/crt/osc/>.

**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**

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.

**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).**

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