



H-1B Employers Must Toe-The-Line

Insights

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The U.S. Labor Department continues to target non-compliance by employers using the H-1B program to employ foreign nationals to work in the U.S. in professional or specialty jobs. Recent DOL audits have resulted in substantial assessments of back-wages and penalties.

An employer using the H-1B program must pay program employees a wage rate that is the greater of (1) the "actual wage" (the rate the employer pays to all others in the position with similar experience and qualifications), or (2) the "prevailing wage" (the wage rate DOL determines for the occupational classification in the area of employment). The employer is also responsible for paying certain government-imposed filing fees.

This Time, Schools Are Hit

Earlier this month, DOL asserted claims of \$4.2 million in back-wages and \$1.7 million in civil money penalties against Maryland's Prince George's County Public Schools. DOL contended that, by requiring 1,044 H-1B teachers to pay program filing fees, the Schools had in effect illegally and willfully reduced the teachers' wages below the legally-required wage rate. DOL's position is that the employer must bear the expenses associated with obtaining H-1B visas.

Elsewhere, DOL recently sought \$78,000 in back-pay from Global Teachers Research and Resources, Inc. for 22 teachers working on H-1B visas. Global provides foreign teachers to school districts in Georgia, Florida, New Mexico, and South Carolina. DOL concluded that Global failed both to keep accurate records of hours worked by the teachers and to pay them for their time spent in employer-provided training.

"I"'s Dotted, "T"'s Crossed?

Every organization employing foreign nationals on H-1B visas should *immediately* audit its policies and practices to ensure that it is complying with the H-1B program requirements. Among other things, management should make sure that the organization:

- Pays H-1B employees the required wage listed on the Labor Condition Application ("LCA") and provides the same benefits to H-1B and U.S. workers;
- Diligently maintains and audits Public Access files for each H-1B worker;
- Promptly withdraws H-1Bs and LCAs when an H-1B worker is no longer employed;

- Pays the reasonable cost of the worker's return transportation to his or her home country if the employee is terminated before the end of the period shown on the H-1B; and
- Evaluates (or has counsel evaluate) any proposed material change in the worker's job description, work schedule, or wage rate to see whether the organization must file an amended H-1B petition.

Every organization that decides to file an H-1B petition should take a hands-on approach to this process. For one thing, an H-1B petitioning employer must sign the application under penalty of perjury. Management should be *certain* going in that it is fully aware of and understands all of its legal obligations as an H-1B applicant and employer.

Related People



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