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H1B: A Definition

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Pervasive Conduct

Pervasive conduct is conduct that occurs frequently and without sanction in the work environment. Pervasive conduct is diffused throughout the working environment or becomes an accepted part of the culture of the environment.

The following conduct refers to a level of intolerant behavior that has the quality or tendency to be spread throughout the work environment. This conduct could constitute hostile work environment harassment because of its discriminatory impact:

- Comments or actions that humiliate, intimidate, exclude, frighten, and/or isolate another on the basis of sexual orientation.
- Comments or actions that humiliate, intimidate, exclude, frighten, and/or isolate another on the basis of race, ethnicity, color, gender, religion or creed (a system of beliefs or principals), age, disability, or marital status.
- Comments or actions that humiliate, intimidate, exclude, frighten, and/or isolate another on the basis of one's employment status.

If the allegation is neither severe nor persistent, and it involves an isolated incident that does not rise to the level of a pervasively discriminatory work environment, it is unlikely the behaviors would be deemed hostile work environment harassment.

Employer Liability

It is an employer's responsibility to maintain a harassment-free environment. Employers are legally liable for discriminatory harassment. Employers may prevent and eliminate workplace harassment as well as limit their liability in cases in which there are founded complaints of discriminatory harassment by:

- Disseminating the organization's antiharassment and nondiscrimination policies and procedures
- Supporting the policies
- Reviewing the policies annually
- Maintaining an internal complaint process, which promptly investigates complaints brought to the employer's attention
- Addressing substantiated complaints brought to the employer's attention by taking appropriate disciplinary and/or preventive action (conciliation, mediation, instruction, termination, etc.) to eliminate the conduct
- Preventing retaliation against staff members who have filed a complaint or offered testimony during an investigative process
- Providing information to help employees recognize, prevent, and respond effectively to hostile work environment harassment

Resources:

Civil Rights Act of 1964, Title VII. <http://www.eeoc.gov>.

Amanda Easton

H1B VISAS**Definition: Nonimmigrant versus Immigrant**

There are two types of visas. An immigrant visa (IV) is given to those aliens seeking to immigrate or reside permanently within the United States. Examples of immigrant visa

classifications are IR1 (immediate relative) and EB1 (employment-based worker). Nonimmigrant visas (NIV), on the other hand, are obtained by people choosing to enter the United States for a prescribed period of time and who do not intend to permanently reside within the United States. The H1B classification is considered a nonimmigrant classification.

Description of H1B Nonimmigrant Classification

The H1B nonimmigrant visa is meant for temporary workers who will eventually return to their home country. The length of stay of an H1B is three years and is eligible for one three-year extension. After the six years is complete, the alien must return to his home country or change status to another category. This category is subject to numerical limitations and needs to be closely monitored in order to keep the employer and visa holder in status and compliant with U.S. immigration law.

The H1B classification is an employment-based nonimmigrant visa. The Immigration and Nationality Act (INA) places numerical limitations on some visa classifications. The numbers in parentheses represent the annual limit on H1B visas in each category. Institutions of higher education are exempt from the numerical limitations and can apply for H1B classifications for employees at any time. The category is defined as a “specialty occupation which requires the theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education. This classification requires a labor attestation issued by the Secretary of Labor. This classification also applies to government-to-government research and development, or coproduction projects administered by the Department of Defense.”¹

Application Process for H1B

What Forms Are Required?

A form I-129 must be submitted to the U.S. Citizenship and Immigration Service (CIS). This form is completed by the employer to request a specific employee to enter on an H1B visa. This I-129 must be approved prior to the alien’s application at a U.S. embassy or consulate. In support of the I-129 petition, the employer must show evidence that a labor condition application was filed with the Department of Labor, that the employment qualifies, and that the alien has a bachelor’s degree or higher, an equivalent foreign degree, or evidence of education and experience equivalent to the required degree. The employer must pay at least the prevailing wage for the required skills and experience.² The prevailing wage regulation is in effect so the employer does not attempt to hire nonimmigrants at a lower rate than the U.S. labor wage.

Once the I-129 has been approved, persons who reside outside of the United States must complete a form DS-156 and DS-157. An interview will take place at the U.S. embassy or consulate in the country of origin.

Time Line for Application

Due to the numerical limitations, all I-129 petitions can be submitted to the CIS on April 1, but prior to October 1 (the beginning date of the federal fiscal year). The CIS will adjudicate the petitions until the numerical limitations have been reached. Historically, those petitions filed closest to April 1 have the greatest likelihood of being approved prior to reaching the numerical limitation.

“Within the U.S. Applicants” vs. “Abroad” Applicants?

In some cases, aliens who may already reside in the United States are required to apply in a different visa category. F-1 students, F-1 students on optional practical training, J-1 exchange students, or J-1 exchange scholars are examples of individuals who typically change their visa status. They are also examples of other nonimmigrant categories that change status.

Visas are issued only outside of the United States. Therefore, if a beneficiary of an I-129 petition already resides in the United States, the beneficiary changes status rather than obtains a visa. When the person leaves the United States, she will need to obtain a visa from the U.S. embassy or consulate abroad. However, if she does not leave the United States, the change of status is sufficient. Once the petition has been approved, the beneficiary receives a receipt (I-797 form) with a new I-94 (Record of Admission) stating their H1B status. The I-94 form and a passport is sufficient to prove the legal right to remain and work within the United States. It will be important for the H1B holder to obtain a Social Security card or a taxpayer ID in order to pay taxes.

Maintaining Status of H1B

A person who holds an H1B nonimmigrant visa must work for the employer that petitioned for the H1B Visa. The Visa holder is able to attend school and, in some cases, is eligible to petition for in-state tuition at institutions of higher education. The dependent of an H1B (i.e., spouse or child) is classified as H-4 nonimmigrants. The spouse and/or child are not able to work within the United States, but can attend school.

NOTES

1. U.S. Department of State, “Temporary Workers,” U.S. Government, http://travel.state.gov/visa/temp/types/types_1271.html (accessed October 16, 2007).
2. U.S. Citizenship and Immigration Service, “I-129 Instructions,” U.S. Government, <http://www.uscis.gov/files/form/i-129instr.pdf> (accessed October 16, 2007).

Paul M. Shelton

I-9 FORMS

The I-9, Employment Eligibility Verification, is a form required by the U.S. government, which the employer must keep on file for all employees. Citizens as well as noncitizens must provide the required information to their employer, who is required to keep the I-9 form on file for a minimum of three years beyond the date of hire or one year after employment termination, whichever comes first.

General Information

The purpose of the I-9 form is to have a record on file of the employee’s eligibility to work in the United States. The form is kept with other human resource–related documents on file in the hiring company. The form is required by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS). However, the current version of the form, OMB number 1615-0047, expired in March 2007. USCIS