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Employers responsibility in H-1 process - Updated 2/22/2009

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Submitted by Rajiv S. Khanna on Feb 18th 2009

A new member of our community, Blueheron wanted to know -

Dear Rajiv, we are small business firm with few h1b workers. I have few questions that I would like to get your advise:

- a) Do we need to file a separate labor petition whenever a h1b worker moves to an different project location?
- b) We are having difficulty finding project for one of our h1b worker. As a small firm, we are unable to run a payroll while the candidate is on bench (so to speak). Should we need to withdraw the petition and send the candidate back home? or is it ok to accept a leave of absence from the candidate? She has a EAD also (as her husband has filled I485 in Nov 2007)

Travel on H-1

The rules on travel while on H-1 are fairly complex. Let me state the basic law.

If the employee moves to an area beyond normal commuting distance for the approved location (stated in their approved H-1 and LCA), and you do not have another valid LCA for that location, you **MUST** amend the H-1.

If the relocation is in the same area, you **MUST** file a new LCA and post the notice at two places in the new job site. You do **NOT** need to amend the H-1.

There are a whole set of rules about exceptions for employees who are required to habitually travel (peripatetic employees), short term travel and travel for attending seminars etc. If you folks need more of that I will edit this article further when I get a few minutes.

Leave of Absence on H-1

Regs do permit leave of absence if an employee genuinely needs it. But you must not use

LOA as a pretext to bench employees. In my view, you must withdraw the H-1.

FAQ

I have a question regarding the h1b candidates who left our firm almost 2 years ago (there are two cases). We didn't send the withdrawal form (as we weren't familiar with the case). If we send a withdrawal notice now (stating that they resigned in the 2006 or 2007) will there be any implications for us? Appreciate your help.

I do not believe we have a choice. You **MUST** inform USCIS. In my view, the fact that we are stepping forward to correct problems voluntarily is in fact helpful to us.

By the way, I think I am scheduled to do an employer-only phone seminar answering and discussing all compliance issues this Thursday at 2 PM. This may be more for our existing clients. But go ahead and send an email through the "contact us" form on our home page. Send email from your corporate account. We are not opening the seminar for anyone but employers. There is no charge, of course.

Nonimmigrant Visas:

[H-1 Visa](#) ^[2]

Profession/Occupation:

[Employers and HR](#) ^[3]

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