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US IMMIGRATION & NATIONALITY LAW

NEW FIELDS IN FORM I-129 FOR H-1B CLASSIFICATION NEED TO SYNC WITH APPROPRIATE WAGE LEVELS IN THE LOTTERY AND LABOR CONDITION APPLICATION

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On February 27, 2026, USCIS published a new edition of Form I-129, which it will accept exclusively beginning April 1, 2026. The new edition of Form I-129 introduces several new fields in the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement. Question 7 through 11 on page 21 of the supplement request the following specific information:

- Level of education required for the position
- Field(s) of study that would qualify someone for the position
- Years of experience required in order to qualify for the position
- Special skills required in order to qualify for the position
- Number of people the beneficiary will supervise, and their position titles

Additionally, question 2 on section 3, page 22 of the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement requests that the appropriate wage level, I through IV, be selected for H-1B cap petitions.

Many of these new fields appear designed to comply with the December 2025 Department of Homeland Security final rule that introduced a weighted selection process for the H-1B lottery. The H-1B registration period for FY 2027 runs from March 4, 2026 to March 19, 2026, at 12 pm ET.

Under the new system, discussed in detail in a prior blog, instead of a random lottery, registrations for unique beneficiaries or petitions will be assigned to the relevant Occupational Employment and Wage Statistics wage level and entered

into the selection pool as follows: (1) registrations for unique beneficiaries or petitions assigned wage level IV will be entered into the selection pool four times; (2) those assigned wage level III will be entered into the selection pool three times; (3) those assigned wage level II would be entered into the selection pool two times; and (4) those assigned wage level I will be entered into the selection pool one time. Pursuant to the new rule, the H-1B cap electronic registration form requires employers to indicate what wage level will be offered to the beneficiary. Although USCIS has not promulgated guidance specifying whether the Labor Conditions Application (LCA) and H-1B petition filed on behalf of a selected beneficiary must match the wage level indicated at the time of registration, it is likely a best practice to ensure that both are in sync.

The weighted selection rule will incentivize employers to select the highest possible wage level in order to increase the candidate's likelihood of being selected in the lottery. However, complications could arise when the H-1B petition is filed. If the beneficiary's job duties appear sophisticated or high level, but the employer is only offering a level I wage, which generally relates to an entry-level role, USCIS can challenge the appropriateness of the wage level. Similarly, USCIS could question the appropriateness of a level IV wage if the employer is offering a higher wage to an employee in order to increase the chances of selection in the H-1B lottery. However, the DHS final rule makes clear that "...if an employer values a beneficiary's work and the unique qualities the beneficiary possesses, the employer could offer a higher wage than required by the prevailing wage level to reflect that value." Thus, an employer should not be precluded from paying a level IV wage even to an entry-level worker if that employee's unique skills, performance, or educational background justify offering a higher wage.

However, even if the employer as selected a level IV wage in the H-1B lottery, at the time of preparing the Labor Condition Application ("LCA"), the employer will need to assign the appropriate wage level based on the DOL 2009 prevailing wage guidance. Under the DOL prevailing wage guidance, an entry level employee on first brush may qualify under level I wage or level II wage rather than Level IV wage. The employer, on the other hand, may be able to justify a level IV wage even if an employee has no prior or little experience based on an advanced degree and possessing other specialized skills, qualifications and certifications/licenses that are essential for performing the duties of the position. The level IV wage can further be justified based on the actual wage

that is paid to similarly situated workers. Under DOL rule, the employer must pay the higher of the prevailing or actual wage. So even if the prevailing wage would be a level 1 wage but the actual wage is at level 4 wage, the employer must pay the higher level 4 wage.

Additional complexities can arise once the employer begins the PERM labor certification process on behalf of an employee currently in H-1B status. An employer might be offering an employee a level I or II wage for the present H-1B position, but could have higher requirements for the PERM and I-140 position. For a PERM position that requires a bachelor's degree and 5 years of experience, however, the DOL is likely to assign a level IV wage in the Prevailing Wage Determination. Although there could appear to be an inconsistency between the H-1B and PERM wage levels, the role described in the PERM is a future role. For beneficiaries from backlogged countries like India and China, this position may only materialize after 10 years or more when they become eligible for adjustment of status. Thus, because the employer is required to project the requirements and salary for a role to be performed many years in the future, it is not inherently problematic for an employer's requirements, and, therefore, the corresponding wage level, to be substantially higher for a PERM position than for the present H-1B role.

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