

# Employers of H-1B Workers May Face Increased Scrutiny Under New Administration

Employers of H-1B workers should prepare to experience more frequent and intense audits and enforcement actions from the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) given the new administration's turn towards more protectionist policies and an apparent less enthusiastic support for the employment of individuals in nonimmigrant work authorizing statuses, such as H-1B. WHD is responsible for ensuring that employers of H-1B workers comply with the employment terms and conditions that employers who employ H-1B workers have agreed to as part of the Labor Condition Application (LCA) that they must file with the DOL in relation to their employment of an H-1B worker. An employer's failure to honor the terms and conditions that it has agreed to as part of its LCA and subsequent H-1B filings may subject them to civil monetary penalties for violations of LCA wage and working conditions requirements, payment of back wages to an H-1B worker, disbarment from petitioning for the employment of other nonimmigrant workers, and other significant penalties.

WHD's investigation of an employer of an H-1B worker may be the result of a complaint from an individual claiming they were aggrieved by the employer's action with regard to the employment of the H-1B (which could be, for example, a current employee, former employee, a U.S. worker who works in the same occupation of the H-1B worker or even the H-1B worker themselves), a credible "tip" from a member of the public, an investigation initiated by the DOL itself or a random investigation of employers otherwise found to be willful violators of H-1B regulations. Investigations by WHD can be very intrusive and disruptive as they often involve the WHD requesting extensive documentation, including payroll records, timekeeping records, job descriptions and worksite documentation, as well as WHD investigators interviewing the H-1B worker, their colleagues and managers.

Through their investigative efforts, the WHD seeks to verify numerous factors such as that the H-1B worker is being paid the "required wage," the H-1B worker is not being required to work excessive hours or not receiving any required overtime wages, the H-1B worker is not or has not been improperly "benched," the H-1B worker is receiving required reimbursements for work-related travel, the H-1B worker is working at the correct work location(s) as specified in their underlying LCA or in accordance with DOL's additional or changed worksite

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requirements, and that the terms and conditions under which the employment of the H-1B worker is occurring are not unfairly depressing or undercutting the wages and other working conditions for U.S. workers who working in a similar occupation in the H-1B worker's area(s) of employment.

To ensure readiness to address any WHD investigation and possible subsequent enforcement actions, employers of H-1B workers should once again carefully review Reinhart's previous three-part H-1B practices series ([Part I](#), [Part II](#), [Part III](#)) and speak with Shareholder Benjamin Kurten regarding any concerns they may about their compliance with H-1B worker rules, regulations and best-practices.

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