H-1B, H-1B1 and E-3 Workers and Remote Work – Employer Action Item Matrix

An employee in H-1B, H-1B1 and E-3 non-immigrant status is generally permitted to work only at the worksite(s) stated in the Labor Condition Application (LCA) approved by the U.S. Department of Labor for the employee’s position. The following matrix is to help employers determine the action items, if any, required when such an employee is directed to work remotely due to COVID-19, at a worksite that was not listed in the approved LCA for the employee’s position.

Please note, employers are required to report any other, material change in the terms and conditions of these employees (including significant change in job duties, hours worked, and termination) to U.S. Citizenship & Immigration Services. Not reporting the change may subject the employer to continued liability for wages under the LCA and may lead to revocation of the employee’s immigration status. Further, these employees generally cannot be put in non-productive status. Please check with your immigration attorney before implementing any such changes.

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**Does the H-1B, H-1B1 or E-3 employee's remote worksite (home in most cases) fall within the same Metropolitan Statistical Area as the worksite identified in the approved LCA or is it within normal commuting distance from it?**

- **Yes**
  - Within 30 days of starting work remotely, have the employee post a notice in two places at the remote location (the worker’s home in most cases) for the required ten days. Once the 10-day posting period lapses, have the employee provide a copy writing on the notice when and where it was posted, and keep a copy of the annotated notice in the public access file for the employee’s position. Please check with your immigration attorney on the content of the notice.¹

- **No**
  - **Has the employee in the aggregate spent 30 workdays or more this year at other temporary worksites not listed in the approved LCA?**
    - **Yes**
      - Employer may need to file a new LCA with the Labor Department and an amended petition with U.S. Citizenship & Immigration Services. Please check with your immigration attorney.
    - **No**
      - The employer may use the Labor Department’s short-term placement option which allows placement of such employees for up to 30 work days (in some cases 60 days) in a calendar year at a worksite not listed in the approved LCA. Please check with your immigration attorney on additional employer obligations and nuances related to this option.

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¹The employer is normally required to post the LCA notice on or before the date the employee begins work at the new location. However, in a March 20, 2020 guidance, the U.S. Department of Labor acknowledged the various service disruptions employers have been experiencing due to the pandemic and indicated that a notice will be considered timely when placed no later than 30 days after the employee begins work at the new worksite. It may seem unreasonable to have employees post notices at their homes, but the Labor Department has not excepted that requirement – the conservative approach is to have the employee post the notice at home if that is the employee’s new worksite.