GUEST WORKER VISAS: THE H1-B AND L-1

High-skilled guest worker programs remain a flashpoint within the immigration debate. The H-1B and L-1 visas receive most of the attention during discussion about high-skilled guest worker programs. The focus on these programs is not surprising considering that corporations employ nearly 400,000 guest workers through the H-1B and L-1 visa programs every year.

The problems with these guest worker programs affect both American workers and guest workers. Guest workers in these programs are easily exploited—they are typically paid below market wages and have little bargaining power. Additionally, employers control guest workers’ visas, which means most guest workers are unlikely to speak up about poor working conditions or cooperate with authorities after a complaint has been filed.

Employers regularly replace existing American workers with cheaper H-1B and L-1 guest workers. Current law allows most employers to bypass available qualified U.S. workers. Despite increased and well-documented abuses of high-skilled temporary visa programs, proponents seek to expand guest worker programs without reforms.

This fact sheet explains the different high-skilled guest worker programs, explores the availability of high-skilled temporary visa programs, provides an overview of the high-skilled guest worker workforce, and discusses the consequences of the programs for foreign and domestic workers.

What are Guest Worker Visas?

Guest worker visas, including the H-1B and L-1, allow U.S. employers to hire citizens of foreign countries to temporarily work in the United States. The Optional Practical Training (OPT) program, while not a visa, grants temporary work authorization for foreign citizens who attend or graduated from a U.S. university.

The H-1B Visa

- The H-1B visa is a non-immigrant visa for a guest worker who will be employed temporarily in a specialty occupation or field. The visa is held by the employer (also known as the petitioner), not the worker (also referred to as the beneficiary).
  - “A non-immigrant” is a person who enters the United States for a temporary stay.
  - “Specialty occupations” are defined by the U.S. Citizenship and Immigration Services (USCIS) as occupations which meet one of the following requirements:
    - “A bachelor’s or higher degree or its equivalent is normally the minimum entry requirement for the position.”
“The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the position is so complex or unique that it can be performed only by an individual with a degree.”

The employer normally requires a degree or its equivalent for the position.”

“The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with attainment of a bachelor’s or higher degree.”

An H-1B worker must either have a bachelor’s degree or higher (from a U.S. or foreign institution), have a state license or certification that permits practice in the specialty occupation, or have training or experience (with progressively responsible positions) in the specialty occupation that is equivalent to completion of a degree.

H-1B visas are issued for workers in a wide range of occupations, including computer-related occupations; architecture; engineering; education (pre-k through post-secondary); administration; medicine and health; management; life sciences; mathematics and physical sciences; social sciences; art; law and jurisprudence; writing; and entertainment and recreation. However, most visas, 66 percent in FY 2015, go to employers hiring workers in computer-related occupations.

The H-1B visa is issued for three years and can be renewed for another three years. If the H-1B worker’s employer sponsors the worker for a green card (permanent residence), then the H-1B visa can be extended in one-year increments until the green card is issued.

Workers involved in Department of Defense (DOD) cooperative research and development projects or coproduction projects can be issued H-1B visas for five years and renewed for a maximum stay in the United States of 10 years.

There is an annual cap on the number of H-1Bs that can be issued. The cap is 65,000 workers per fiscal year. However, there are several exceptions, which raises the number of new visas issued to over 120,000 each year.

Nonprofits and government organizations that conduct research and institutions of higher education are exempt from the annual cap.

The cap does not apply to renewed applications. This includes the following:

- an extension on an H-1B worker’s period of stay;
- a change in the conditions of the worker’s employment;
- a request for new employment for an H-1B worker already in the United States.

There are 6,800 visas set aside within the cap under the terms of the United States—Chile and the United States—Singapore free trade agreements and unused visas are made available for use in the next fiscal year.
**H-1Bs Available Under Fixed Cap** | **H-1Bs Available to Workers with a Master’s Degree or Higher from an American Institute of Higher Education** | **H-1Bs Available to Institutions of Higher Education and Nonprofit and Government Research Organizations**
---|---|---
65,000 | 20,000 | Unlimited*

* In FY 2015, nearly 30,000 initial employment visas were issued in the “unlimited” category.15

- H-1B employers are generally not required to first recruit qualified U.S. workers for available positions, nor are they prohibited from displacing existing U.S. workers in favor of lower-paid guest workers. H-1B employers must only attest: (1) “that they will pay H-1B workers the amount they pay other employees with similar experience and qualifications or the prevailing wage; (2) that the employment of H-1B workers will not adversely affect the working conditions of U.S. workers similarly employed; (3) that no strike or lockout exists in the occupational classification at the place of employment; and (4) that the employer has notified employees at the place of employment of the intent to employ H-1B workers.”16
  - The prevailing wage is set by three factors: occupation, location, and skill level. For an H-1B worker, in a given job and in a given location, the employer can pay one of four levels based on the employee’s skill level. The H-1B worker’s skill level is determined by the employer. Within the prevailing wage structure, Level I is equivalent to the 17th percentile of the wage distribution. According to analysis by Howard University Professor Ron Hira, Level I wages are 40 percent lower than the average local-wage an American worker in the same occupation would receive. Level I wage rates are meant for those in entry level positions—for example, research fellows, workers in training, or interns. Level II wage rates are for workers who are generally seen as qualified and have the experience or education required to perform the job. H-1B workers paid at the Level II rate receive wages that are 20 percent lower than the average local wage for American workers in the same occupation. The vast majority—80 percent—of H-1B workers were paid at these lowest two skill levels. Level III is the average local-wage rate. The Level III wage rate is meant experienced workers who have a sound understanding of the occupation.17 Level IV is the highest wage level, and jobs at this level generally require management responsibilities.

- The requirements for H-1B “dependent employers” and “willful violators” are slightly different (more about these employers below). These employers must attest: (1) “that they did not displace a U.S. worker within the period of 90 days before and 90 days after filing a petition for an H-1B worker; (2) that they took good-faith steps prior to filing the H-1B application to recruit U.S. workers” and “offered the job to any [U.S.] worker who applies and is equally or better qualified for the job” than an H-1B worker; and (3) that in the event the worker is placed with a third-party employer, the original employer inquired with the third-party employer that it did not displace or intend to displace a U.S. worker within the 90 days before and 90 days after the placement.18
However, there are ways employers can relieve themselves of following these requirements. If a company hires an H-1B worker who receives annual wages equal to or higher than $60,000, or has attained a master’s or higher degree in a specialty related to their employment, then the H-1B worker is exempt. H-1B dependent employers and willful violators that employ exempt H-1B workers do not have abide by the requirements listed above.¹⁹

The L-1 Visa

The L-1 visa is used by multinational corporations to transfer employees employed by the company abroad to a branch, parent, affiliate, or subsidiary of that same employer in the United States. The L-1 worker must have been employed by the company within the three preceding years and have been employed abroad by the sponsoring firm continuously for one year.²⁰ There are two classes, the L-1A visa is for managers and executives and the L-1B visa is for workers with “specialized knowledge.”²¹ Also, the L-2 visa grants employment authorization for the spouses of L-1 workers.

- The L-1 visa is often used by companies to facilitate “knowledge transfer.” This means employers have guest workers come to the United States to learn new skills and then the employer has the guest worker take the knowledge and skills they’ve learned back to their home country.²² For example, Intel uses the L-1 visa so American workers can “train L-1 workers who staff the company’s offices in Russia, India, China and other high-growth markets.”²³

- As with the H-1B visa, the L-1 visa is held by the employer, not the worker.²⁴ There is no cap on the number of L-1 visas that may be issued. The visa is renewable for up to six years for specialty workers and seven years for managers²⁵ and there is no wage minimum.²⁶

- A worker who comes to the United States on an L-1 visa can be sponsored by the employer for permanent U.S. citizenship, but very few employers sponsor their L-1 workers (about 5,000 workers in FY 2014 were sponsored for citizenship).²⁷

Optional Practical Training Program

The OPT program allows students on an F or M visa to work in the United States for 12 months after graduation. Students with a degree in a science, technology, engineering, and mathematics (STEM) field can work another 24 months. Graduates with two STEM degrees at different educational levels can extend their OPT period by a total of 48 months. The OPT program does not require employers to pay OPT workers, unless they work in a STEM field.²⁸ For OPT workers in STEM fields, employers need only attest that these workers will have terms and conditions of employment that are “commensurate” with similarly situated U.S. workers, an insufficient standard that allows employers to pay OPT workers below the local average wage.²⁹ Employers are not
required to pay Medicare or Social Security taxes for OPT workers. The OPT program does not require that employers test the labor market before hiring an OPT worker.

B-1 in Lieu of H-1B

Finally, the B-1 visa in lieu of H-1B allows employers to bring in workers even when the cap for H-1B workers has been reached. The B-1 in lieu of H worker must have a bachelor’s degree, perform work or receive training of an H-1B caliber (specialty work), be paid by their foreign employer (cannot be a U.S. source), and the task they are coming to America to do can be accomplished in a short amount of time. There is no information available on how many of these visas are issued each year, their duration of stay, the type of work involved, or the requesting/sponsoring employer.

In late 2011, the Boeing Company attempted to bring 18 Russian contractors from its engineering and design center in Moscow on B-1 visas in lieu of H-1B. The Russian contractors were denied entry at Sea-Tac Airport by immigration officials after the contractors admitted that they would be working at Boeing in Seattle as opposed to receiving training. The Russian engineers told investigators that they were coached by their Russian employer to tell immigration officials that they would be receiving training and not working. The union representing engineers at Boeing reported that Boeing had between 75 and 200 Russian engineers working at Boeing in Seattle at any one time on B-1 in lieu of H-1B visas. If the Russian engineers had been on H-1B visas, then Boeing would have to pay them wages set forth in the collective bargaining agreement. Instead, the Russian engineers were paid wages that were one-third to one-fifth of what the U.S. Boeing engineers made.

Quantifying the High-Skilled Guest Worker Workforce

Among the STEM workforce, there were 1,492,833 non-U.S. citizens employed (just over seven percent of workers) in 2016. Among all professional occupations in 2016, there were over 3.3 million non-U.S. citizens employed (just 5.5 percent of the professional workforce).

Guest workers are highly concentrated in STEM occupations. Guest workers were 14.2 percent of the computer and mathematical science workforce in the United States; 6.7 percent of the architecture and engineering workforce; and 10.5 percent of the life, physical, and social science workforce in 2016. Further, guest workers made up 24.9 percent of software developers, 13.3 percent of computer programmers, 17.4 percent of computer hardware engineers, 20.6 percent of computer and information research scientists, and 14.6 percent of mathematicians, statisticians and miscellaneous math occupations in the United States in 2016. The highest

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a This includes business and financial operations, computer and mathematical science, architecture and engineering, and life, physical, and social science occupations.

b This includes all STEM occupations as well as management; community and social service; arts, design, entertainment, sports, and media; education, training, and library occupations; and healthcare practitioners and technical occupations.
concentration of guest workers in STEM occupations was among medical scientists and life scientists where guest workers were 28.5 percent of the workforce in 2016. All of these guest workers are employed under a variety of skilled worker visas, including the B, H-1B, L-1, L-2, O, and OPT.

**H-1B Visa Workforce**

The U.S. government does not track how many H-1B workers are in the United States. USCIS only releases the number of initial and renewed visas that are issued each year. Obviously, this makes quantifying the impact of H-1B visas difficult. The Economic Policy Institute (EPI) estimated that in 2013 corporations employed 460,749 H-1B workers.

- USCIS approved 275,317 H-1B petitions in FY 2015, a 13 percent decrease over FY 2014. Petitions for approved initial employment numbered 113,603, an eight percent decline from FY 2014.
- In FY 2015, among all H-1B workers, for 45 percent the highest degree held was a bachelor’s degree, 44 percent held a master’s degree, and 10 percent held a doctorate or professional degree. Most of the approved (71 percent) H-1B workers were under 35 years old.
- Of the 275,317 H-1B visas approved in FY 2015, 183,076 were for workers employed in computer-related occupations; 23,866 were for workers employed in architecture, engineering, and surveying occupations; 11,543 were for workers employed in medicine and health; 12,239 were for workers employed in college and university education; and 6,898 were for workers employed in accounting, auditing, and related occupations.
- In FY 2003 computer-related occupations accounted for nearly 39 percent of all H-1B visas approved, by FY 2015 computer-related occupations accounted for 66 percent of all H-1B visas approved.

**Corporate Interests and H-1B Visa Research**

The debate over H-1B visas tends to be clouded by corporate-sponsored research that not surprisingly finds that H-1B workers are well paid, among the best and the brightest, and create jobs for U.S. workers. The vast majority of this research is flawed. One study claims that H-1B workers create jobs for U.S. workers, but does not conduct similar research on how many jobs are created when a U.S. citizen or permanent resident is hired, making a meaningful comparison impossible. The corporate-sponsored research is simply meant to support the position that there is a shortage of U.S. workers and that H-1B workers are among the “best and the brightest.” Corporations sponsor this research to justify their continued access to a cheap, young, and indentured workers.

**The “Best and the Brightest” Myth**
Many supporters of high-skilled guest worker programs justify the programs by arguing that the H-1B visa helps the United States recruit and retain the best and brightest workers. However, there is little support for this claim. In most years, the process to obtain an H-1B visa is actually a random lottery. The lottery is held when the number of applications exceeds the number of available visas. Instead of awarding H-1B visas to the most highly skilled (or highest paid) H-1B candidates, the visas are awarded through a lottery system. The nature of the lottery system also gives employers incentive to file for as many H-1B visa applications as possible to increase their odds of receiving a visa in the random lottery.

- Fifty-four percent, 130,528, of the H-1B visas in FY 2010, the most recent year with available data, went to non-immigrants for “entry-level” positions. Entry-level positions require a “basic understanding of duties and perform routine tasks requiring limited judgment.” Entry-level positions also happen to be the lowest paid.

- Only six percent of the H-1B visa workers in FY 2010, the most recent year with available data, received compensation in the top pay grade (level IV), a reflection of highly specialized skills.

- Research shows “winning an H-1B visa has an insignificant average effect on patenting.” Researchers compared companies that were allocated H-1B visas in the FY 2006 and FY 2007 lotteries to companies that sought H-1B visas, but were not awarded one in the lottery. The patenting rate was similar at companies that were awarded H-1B visas and companies that lost out on H-1B visas in the lottery. This paper also found that H-1B workers displace other workers.

- Employers have the option of sponsoring H-1B workers for permanent status, but few do. Just over 60,000 H-1B workers had their applications for permanent status certified in FY 2016 and for various reasons, not all of these certified petitions will lead to permanent status. Considering 275,317 H-1B visas were issued and renewed in FY 2015 and the size of the H-1B workforce is projected to be nearly 900,000, few employers are transitioning guest workers to permanent status. If a skilled worker is exceptionally talented, a company should be motivated to keep the worker permanently. Instead, the lack of sponsorships is further evidence that guest workers are used as cheap, temporary labor.

- Finally, a study by University of California, Davis Professor Norm Matloff found that foreign students who graduated from U.S. universities were not superior to their American counterparts. Specifically, the former foreign students were found to “have talent lesser than, or equal to, their American peers.”

H-1B visa proponents often try to downplay the dark side of H-1B visas, including employer abuse of foreign workers, displacement of U.S. workers, and the use of H-1B visas to move jobs out of the United States. If asked, most Americans would agree that U.S. immigration policy should not facilitate the loss of jobs in the United States and protect the skilled workers who come to work in the United States.
**Body Shops**

Generally, body shops are staffing firms that provide labor to other employers. However, body shop owners exploit the H-1B visa program by utilizing low-paid guest workers as their primary, if not exclusive source of labor. Body shops are not providing labor that is otherwise unavailable, they just provide the labor at a lower price.50

- Body shops are an abundant source of Department of Labor (DOL) complaints. According to the DOL, a large majority of the wage and hour complaints it received in FY 2009 were related to activities at body shops.51 In the Northeast region, where body shops predominate, “nearly all of the complaints [DOL] receive involve staffing companies and that the number of complaints are growing.”52

- A 2014 investigation found that body shops commonly house as many as eight to 10 workers in one small apartment. H-1B workers working for body shops also reported not having a job for them when they arrived in the United States (a practice called “benching”), having wages illegally withheld from their paychecks, and being required to pay illegal fees.53

- The use of body shops makes it difficult to enforce H-1B laws. Body shops may contract out H-1B workers to a third-party employer who then contracts out the H-1B worker to a different employer. “[O]nly the staffing company, as the employer who has petitioned for the visa and made the attestations to comply, is technically accountable and ultimately liable for complying with program requirements.”54

**Offshore Outsourcers**

Offshore outsourcing is a term used to describe the practice of a U.S. company contracting with a foreign corporation to move in-house professional and technical jobs to a lower-cost foreign country. H-1B and L-1 visas are used to facilitate the movement of U.S. jobs offshore. India is regarded as the center for offshore outsourcing.

- In 2015, the top 10 employers of H-1B workers were companies specializing in moving work from the United States to primarily India.55

- In 2015, 70.9 percent of H-1B visas issued were for workers born in India.

While there are hundreds, if not thousands of instances of guest workers being used by corporations to replace U.S. workers, one of the most recent egregious examples of H-1B abuse was carried out by a public university. In February 2017, the University of California, San Francisco (UCSF) laid off 79 IT professionals and replaced them with H-1B workers who work for the Indian outsourcing company HCL Technologies. Before the UCSF employees were laid off they were forced to train their replacements.56 University of California President Napolitano justified the layoffs as a way for the university to cut costs—which runs directly counter to the purpose Congress laid out for the H-1B program. The H-1B program is meant to “help
employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce,” not replace U.S. workers with cheaper workers in the United States or abroad.57

Similar cases at Southern California Edison Case and Walt Disney World further illustrate the misuse of the H-1B visa program. Between 2014 and 2015 Southern California Edison (SCE), a highly profitable utility company, said it would shed 500 of its information technology professionals and replace them with H-1B workers, with some of the work going offshore. Before the SCE professionals were laid off they were required to train their guest worker replacements and sign a non-disparagement agreement in order to receive their severance packages.58 SCE essentially said it was contracting with India-based Infosys and Tata Consultancy Services, because other companies are adopting the same business strategy.59

In 2015, the Walt Disney Company also laid off IT professionals and outsourced their work. Disney declined to disclose how many were laid off, but it was estimated to be 500. Disney employees “said since India-based HCL landed Disney’s IT contract in 2012, they have seen more international employees being hired locally, and they said many of Disney’s information technology jobs are being outsourced overseas.”60

L-1 Visa Workforce

The L-1 visa is largely a black box. From an employer’s perspective, L-1 visas are desirable, because there are no minimum wage requirements. There is no data available showing how much L-1 visa workers are paid or the duration of their stay. The U.S. Department of State issued 66,700 L-1 visas in FY 2013.61 It is unknown precisely how many are working in the country at any given time, but EPI estimates in 2013 companies employed 311,257 L-1 workers.62

Essentially, the L-1 visa allows employers to legally pay well below the market wage, offshore work, and displace U.S. workers. Employers only suffer consequences when they fail to meet the lowest of labor standards. For example, in late 2013, Electronics for Imaging, was fined by the U.S. Department of Labor and ordered to pay back wages to guest workers who were paid just $1.21 per hour to install computer systems.63 The employees were likely on L-1 visas. Since there is no prevailing wage requirement, Electronics for Imaging was only required to pay its foreign employees the state minimum wage (note: since there is no prevailing wage L-1 employers have to pay the higher of the state or federal minimum wage, consistent with standard employment law).

An automotive engineer, Suraj Kamath, at Bosch Engineering in Santa Barbara, CA was working in the United States for a little over four years on an L-1 visa. Mr. Kamath believed Bosch employed as many as 160 high skilled workers in the United States and paid them between $600 and $2,100 per month (as well as a standard of living allowance and transportation reimbursement). However, Mr. Kamath knew this compensation was “far lower than salaries typically paid to highly skilled workers in the United States.” Bosch required Mr. Kamath to return to India when he refused to give Bosch the federal and state tax refunds he had lawfully received in the three previous years.64
The OPT Workforce

In FY 2013, a little over 123,000 foreign students and graduates received OPT work authorization.\textsuperscript{65} EPI estimates that another 15,827 workers received STEM OPT extensions, bringing the total number of workers in the United States as part of the OPT program to 139,155.\textsuperscript{66} The OPT program has minimal wage standards and there is no data on how much OPT recipients are paid, their working conditions, or where they work.

### USCIS Approvals for OPT Employment Authorization Fiscal Years: 2009-2013

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Pre-Completion OPT</th>
<th>Post-Completion OPT</th>
<th>17-Month STEM Extension</th>
<th>Grand Total</th>
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<tbody>
<tr>
<td>2009</td>
<td>3,370</td>
<td>81,868</td>
<td>5,902</td>
<td>91,140</td>
</tr>
<tr>
<td>2010</td>
<td>3,067</td>
<td>83,624</td>
<td>10,423</td>
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</tr>
<tr>
<td>2011</td>
<td>3,143</td>
<td>89,237</td>
<td>13,179</td>
<td>105,559</td>
</tr>
<tr>
<td>2012</td>
<td>Unavailable</td>
<td>Unavailable</td>
<td>Unavailable</td>
<td>115,303</td>
</tr>
<tr>
<td>2013</td>
<td>Unavailable</td>
<td>Unavailable</td>
<td>Unavailable</td>
<td>123,328</td>
</tr>
</tbody>
</table>


Lack of Protection for U.S. Workers

The H-1B and L-1 visa programs provide no real protections for U.S. workers. Guest worker wage standards are so low (or non-existent) that it easy for employers to replace experienced U.S. workers with entry-level guest workers, saving employers thousands of dollars. Employers who hire guest workers actually boast that guest workers work for lower pay than their U.S. counterparts. It is not surprising then that in computer occupations employment is up, and wages are flat.
While employers make unsubstantiated claims of worker shortages, studies repeatedly show that labor market indicators do not demonstrate a labor shortage and that there are plenty of applicants who meet the requirements for open positions. As seen in the related chart, the wage and employment data show that computer occupations defy the laws of economics. For example, during the same period as in the related chart, May 2004 to May 2016, employment of petroleum engineers increased by 123 percent and their real wages increased by 26 percent. Similarly, for pharmacists, employment increased by 37 percent and their real wages increased by 12 percent.

Absence of a Labor Market Test

The H-1B visa program allows employers to add to the supply of the computer and engineering workforces without evidence that U.S. workers are not available. This increased supply keeps wages low, forces current workers from the field, and deters others from entering.

In 2016, there were 119,161 unemployed computer and engineering professionals in the United States (not counting discouraged and underemployed professionals). In addition, approximately 500,000 new STEM professionals enter the workforce each year. In the 2012-13 academic year, over 500,000 postsecondary degrees, from associate’s to Ph.D., were awarded to U.S. citizens and permanent residents in STEM fields. However, according to the 2016 American Community Survey, there were 2.4 million U.S. citizens with a STEM bachelor’s degree under the age of 26 in the U.S. workforce. Among those 2.4 million recent graduates, nearly 134,513 were looking for work.
With one small exception, there is no requirement that employers take steps to recruit U.S. workers or new graduates before seeking guest workers. Only “H-1B dependent employers” and “willful violators” must attest that they have “taken good faith steps to recruit...[U.S.] workers for the job for which the non-immigrant or non-immigrants is or are sought.” An “H-1B dependent employer” is defined as:

1. An employer who has 25 or fewer full-time employees of which more than seven are H-1B workers;
2. An employer who has between 20 to 50 full-time employees of which more than 12 are H-1B workers; or
3. An employer who has more than 50 full-time employees of which 15 percent or more are H-1B workers.

However, H-1B workers who are employed by H-1B dependent employers are exempt from these provisions if the H-1B worker is paid at least $60,000 per year or holds a master’s degree. Since the $60,000 wage minimum was not tied to inflation, this wage standard set in 1998 has remained unchanged. The minimum would be nearly $87,963.86 in 2016 dollars, which even then is often below the average pay for occupations where H-1B employment is most common.

A “willful violator” is defined as an employer who has willfully failed to follow or misrepresented the H-1B rules.

Low or Non-Existent Wage Requirements

Inadequate wage standards create incentives for employers to replace U.S. workers with guest workers. The Southern California Edison case shows that savings can be considerable—the H-1B workers brought in to replace the existing workers were paid up to 41 percent less than the U.S. workers they replaced. In the UCSF case, the university said laying off 79 IT workers and outsourcing their work would save it 30 million dollars over the next five years.

- H-1B rules require that employers pay “the actual wage level paid by the employer to all other individuals with similar experience and qualifications” or “the prevailing wage level.”
- “Prevailing wage” is “the average wage paid to similarly employed workers in a specific occupation in the [geographic] area of intended employment.”

In the H-1B program, the prevailing wage has four tiers as determined by the H-1B workers’ occupation, location, and skill level. Because employers decide how to classify H-1B workers’ occupation and skill level, companies can pay H-1B workers below the average local wage for occupations while technically remaining in compliance with H-1B prevailing wage requirements. In 2015, 80 percent of H-1B workers were paid at the lowest two prevailing wage tiers, below the average local wage for the jobs they held.
By being able to set H-1B workers’ pay at the lowest two tiers of the prevailing wage, companies can achieve cost savings of anywhere from 40 to 20 percent. Phiroz Vandrevala, an executive with Indian IT firm Tata Consultancy Services, remarked in an interview that “our wage per employee is 20-25 percent less than U.S. wage for a similar employee.”

### H-1B Labor Condition Applications (LCAs) by Wage Level

<table>
<thead>
<tr>
<th>Wage level</th>
<th>Skill level</th>
<th>Wages compared to average local-wage</th>
<th>FY15 Certified H-1B LCAs</th>
<th>Share of H-1B LCAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level I</td>
<td>Entry level</td>
<td>40% discount over average wages</td>
<td>472,283</td>
<td>41%</td>
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<tr>
<td>Level II</td>
<td>Qualified</td>
<td>20% discount over average wages</td>
<td>448,700</td>
<td>39%</td>
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<td>Level III</td>
<td>Experienced</td>
<td>Average wages</td>
<td>121,743</td>
<td>10%</td>
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<tr>
<td>Level IV</td>
<td>Fully Competent</td>
<td>A premium (~20) over average wages</td>
<td>61,669</td>
<td>5%</td>
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<tr>
<td>(blank)</td>
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<td></td>
<td>56,823</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>1,161,218</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Source: Analysis of DOL OFLC Microdata.

### Mistreatment of the H-1B Workforce

One factor that enables employers to take advantage of H-1B workers is that the workers can lose their legal status and be forced to return to their home country if they are terminated by their employer. The GAO noted that “[a]ccording to agency officials, H-1B workers are likely to be reluctant to file complaints against employers for fear that the company might be disbarred, which in turn could result in the complainant and fellow H-1B workers at the company losing their jobs and potentially having to leave the United States.” The H-1B workers are also reluctant to cooperate after a complaint has been filed “for fear of similar repercussions.”

The U.S. Department of Labor (DOL) has cited numerous obstacles to its ability to protect H-1B workers, including lack of authority to initiate investigations, inability to access the Labor Condition Application database, inadequate fines for employer noncompliance with a DOL investigation, and lack of subpoena authority to obtain employer records.
Guest Worker Visas: The H1-B and L-1

Where to Go from Here?

The United States should adopt policies that protect the investment our country has made in its skilled workforce and ensure that opportunities are available for the young adults we have urged to enter STEM professions. The DPE recommends the following six reforms be made to our guest worker visa programs:

1. Evidence of a labor shortage before employers are authorized to seek guest workers;
2. Requiring all employers to advertise and offer jobs to U.S. workers who are equally or better qualified than the temporary guest worker sought;
3. Increase the prevailing wage standard for guest workers to the 75th percentile of the prevailing U.S. wage, so that employers do not have an incentive to hire temporary guest workers. This would also create an incentive for employers to invest in training U.S. workers;
4. Establishment of reasonable caps for all guest worker visa programs;
5. Allowing guest workers to self-petition for green cards after two years of employment; and
6. Regular audits of top skilled guest worker visa users to ensure compliance with the above provisions.

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For a more in-depth analysis of these issues, see DPE’s report: *Gaming the System: Guest Worker Visa Programs and Professional and Technical Workers in the U.S.* 2012.

For more information on professional workers, check the DPE website: [www.dpeaflcio.org](http://www.dpeaflcio.org).

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The Department for Professional Employees, AFL-CIO (DPE) comprises 24 national unions representing over four million people working in professional and technical occupations. DPE’s affiliates represent teachers, physicians, engineers, computer scientists, psychologists, nurses, university professors, actors, technicians, and others in more than 200 professional occupations.

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2 8 CFR §214.2(h)


7 What is a Specialty Occupation? op. cit.


10 Characteristics of H-1B Specialty Occupation Workers FY 2012, pg. 3. op. cit.

11 Ibid., p. 4.

12 Ibid.

13 Ibid.


18 Ibid.


21 8 CFR § 214.2(l)


25 Ibid.

26 See 8 CFR § 214.2(l)


28 Hira, 2015.

29 8 CFR 214.274(a)


31 9 FAM 41.31 N11


34 Ibid.

35 Ibid.


38 Ibid.

39 Ibid.


43 Ibid.

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76 8 U.S.C §1182(n)(1)(E)(ii).
79 8 U.S.C. §1182(n)(1)(A)(i)(I) and (II)
82 Ibid.
85 Ibid.
86 Ibid., p. 47, 49.