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# Labor Department Imposes Significant New LCA Electronic Notice Obligations on Employers and End-Clients

 UNITED STATES

## At a glance

*The Department of Labor issued guidance that imposes significant new requirements on notice posting practices for labor condition applications (LCAs). Employers may need to review notice posting practices at their worksites to validate those practices against the new guidance.*

## The situation

Important new [guidance](#) from the Wage and Hour Division of the Department of Labor means that employers have enhanced obligations to ensure that they meet DOL's new positions on the notice and posting requirements of the H-1B labor condition application (LCA) regulations.

By law, H-1B employers have long been required to post a notice informing affected U.S. workers of the employer's intent to hire H-1B nonimmigrants and of the U.S. workers' right to examine certain documents concerning the H-1B position and to file complaints if they believe violations of H-1B program rules have occurred. This includes giving notice to workers at a third-party site where an H-1B nonimmigrant is assigned, even if those workers are employed by another organization.

The new DOL guidance may require employers to evaluate LCA notice posting practices at their worksites, including the practices of other employers who place H-1B workers at those worksites. DOL's guidance takes the position that employers may need to take extra steps to make certain that electronic notices are readily available and accessible to all affected employees, including:

- Taking steps to make sure that all affected U.S. workers – including employees of a third party – are [aware](#) of an LCA notice for an occupation at the worksite;
- Ensuring that affected workers have [ready access](#) to the electronic notice. Posting the notice on an inaccessible or little-known electronic site would not suffice to meet the LCA regulations; and
- Ensuring that affected workers are able to [locate the electronic notice that applies to their specific worksite](#).

Failing to meet these obligations could subject the H-1B employer to significant penalties, including debarment from the H-1B program.

## What the new guidance means for H-1B employers and end-clients

In an environment of already heightened LCA enforcement, the new WHD guidance means that employers must take even greater care to ensure that the notice requirements of the LCA regulations are met, particularly when they use electronic notices.

H-1B employers may need to consider whether and how to align their LCA posting processes to the new guidance. Where H-1B workers are assigned to third-party worksites, DOL's new guidance may demand additional posting obligations where companies use electronic means of posting.

For questions about the new LCA notice obligations, please contact your designated Fragomen team or the firm's Government Strategies and Compliance Group.

*This alert is for informational purposes only. If you have any questions, please contact the immigration professional with whom you work at Fragomen.*