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USCIS Flips Position: Proposes That Amended H-1B Petitions Must Be Filed When Changing Worksite

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If your H-1B employee changes his or her worksite location, you'll need to file an amended H-1B petition with a corresponding new Labor Condition Application for Nonimmigrant Workers (LCA) under a [proposed guidance](#) recently released by the U.S. Citizenship and Immigration Services (USCIS). This position, consistent with this April's decision by USCIS' Administrative Appeal Office in the *Matter of Simeio Solutions, LLC*, is a complete reversal of USCIS' long-held position that a geographic move does not trigger the need to file an amended Form I-129 petition. The proposed change will significantly affect employers who have multiple offices or locations, making it more difficult and costly to move H-1B employees from one work location to another.

Reversal on Need to File Amended H-1B Petition

Previously, USCIS had informed employers that as long as the LCA has been filed and certified for a new employment location, there was no need to file an amended H-1B petition solely because of the change in worksite location. As long as there were no other material changes in the terms and conditions of the employee's status or eligibility for H-1B classification, you only needed to post the new LCA in the new worksite location to be in compliance.

Now, under the proposed guidance and *Simeio Solutions* decision, an amended H-1B petition will be needed whenever an H-1B employee changes his or her place of employment to a location outside of the county covered by the existing, approved H-1B petition. This applies even if a new LCA has been certified and posted at the new location. USCIS now contends that a change in the H-1B worker's place of employment is a material change in the terms and conditions of employment which therefore triggers an amended petition.

USCIS clarifies that you will *not* need to file an amended petition if your H-1B worker is moving to a new worksite within the same metropolitan statistical area county or "area of intended employment" as in the original petition and LCA. You still must post the original LCA in the new work location, but no amended documents must be filed. Similarly, you would not need to file an amended petition if your H-1B employee will be working at a new location for only a short time, namely up to 30 days (60 days, in some cases), or the employee goes to a "non-worksite" location (e.g., staff seminars, management conferences or other casual, short-term assignments).

What To Do If Your H-1B Workers Change Worksite Locations

If your H-1B workers have already changed worksites, you have until

August 19, 2015 to file an amended H-1B petition and corresponding LCA. USCIS states it will not take any adverse action against you or your employees as long as you file by the August 19th deadline. If you fail to file an amended petition by that date, you will be out of compliance and both you and your H-1B employee would be subject to adverse action.

After you file the amended petition, your H-1B worker may begin to work at the new worksite location immediately. You need not wait for a final decision to move the employee to a different worksite.

If your amended H-1B petition is denied, your H-1B employee may return to work at the location covered by the original petition, as long as the original petition is still valid and the employee is able to maintain valid nonimmigrant status at that location.

Comment Period Open Until June 26

USCIS will accept comments from the public and interested parties about its proposed change in position until June 26, 2015. Accordingly, USCIS may change its final guidance based on questions and concerns raised during the comment period. We will keep you posted as this issue gets finalized.

If you have any questions about this or any other visa or immigration issue, please contact me at or 801-799-5976.