

FAQ: Public Access Files (PAFs)

Maintaining a Public Access File (PAF) is one of the key legal components of the H-1B process. This FAQ is designed to help you understand the requirements of the PAF and how it fits into the H-1B process.

1. What is the Public Access File (PAF)?

The PAF is a file that an employer must have and maintain containing certain key documents relating to the H-1B process and employment conditions. It must be available for inspection by the Department of Labor (DOL) and the public, upon request.

2. What should be included in the PAF?

The PAF must contain:

1. Copy of the certified and signed LCA (Labor Condition Application)
2. Actual wage statement of the wage to be paid
3. Employer's actual wage system used to set the actual wage
4. Documentation used to establish the prevailing wage for the occupation
5. Documentation used to provide notification of filing to employees
6. Summary of benefits offered
7. Evidence of receipt of the LCA by the H-1B employee

Note - Only the documents that are required to be in the PAF should be kept in a PAF.

3. What are the requirements of the Notice of Filing?

Employers are required to provide notice of filing of the LCA to affected workers¹ by posting for at least 10 consecutive business days.² This requirement can be met in three main ways or a combination of them:

- **Physical Posting** - by posting a hard copy of the Notice in two conspicuous locations at all places of employment³ listed on the LCA. Examples, where the notice could be posted, include: employee board, break room, HR notification board, government notices board or similar or
- **Electronic Posting** - by posting the Notice on the company's intranet.
- **Notification to a collective bargaining representative**, if applicable.

As remote work options continue to grow, employers should designate an easily accessible space in the company's intranet for federal and state posters and notices such as this Notice of Posting.

Electronic posting and/or a combination of electronic and physical posting should be considered when the employee might be working remotely from various temporary locations (such as home, office sites)

¹ Affected workers are those at the same place of employment and in the same occupational classification in which the H-1B workers will be or are employed.

² [Fact Sheet #62M: What are an H-1B employer's notification requirements?](#)

³ [Fact Sheet #62J: What does "place of employment" mean?](#)

***This material is not intended to substitute as legal advice.**

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for up to 60 days per year, based on the argument that the electronic posting covers all potential locations.

4. How should PAFs be stored?

PAFs should be stored securely either physically (at the employer's principal place of business or at the worksite) or electronically. The location of storage should facilitate inspection in the event of an audit. PAFs should be separate from the employer's personnel or immigration records.

5. How long should employers retain the PAFs?

PAFs should be retained:

- For one year beyond the date of employment under the LCA or
- If no foreign national is employed under the LCA (for example because the candidate was not selected under the H-1B lottery or the foreign national employee received their green card), the PAF documentation must be kept for one year from the expiration of the LCA, or for one year from the withdrawal of the LCA.

A best practice is to withdraw unused LCAs to shorten their retention period.

6. Can employers store the PAFs electronically?

Yes. The DOL has confirmed that employers can store PAFs on a secured electronic (or digital) company site that must be made available to interested parties. Additionally, it confirmed that the employer can maintain a scanned copy of the signed LCA (i.e. no requirement to maintain the original signed LCA).

7. Does a change in employment location trigger new PAFs obligations?

Yes. A material change in employment, for example, a significant change in title and duties and/or a change in work location may trigger an obligation to file a new LCA and/or amended/new H-1B petition before the change occurs.

8. In the case of a corporate change, what are the requirements of the PAF?

When the restructuring results in a successor in interest relationship, under immigration law, PAFs must be reviewed and updated before the corporate change.

The updated PAFs must include a sworn statement by the successor entity; the affected LCAs and date of certification transferred to the successor entity; and a description of the successor entity's wage system. There are other factors beyond the scope of this article that need to be considered.

9. What are the penalties for failing to comply with LCA/PAF requirements?

Violations can result in various penalties, including monetary fines, back wages to undercompensated H-1B workers; designation of H-1B Willful Violator; debarment from using the H-1B program; and others.

Similar to the Form I-9s, employers should engage in regular audits of their PAFs. Employers' proactive good faith efforts are considered mitigating factors against any potential penalties for lack of compliance.

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