

Equal Pay

H-1B visa holders suffer by not receiving the prevailing wage. **BY LAURIE N. ROBINSON**



Some of the most profitable companies in today's economy are in the tech industry. You wouldn't know that, though, by looking at the salaries of the employees who have helped make these companies so successful—H-1B visa holders. The H-1B visa program permits employers to temporarily hire non-immigrants—many of whom are from China or India—to fill specialized jobs, mostly in the IT sector. ¶ A survey the Center for Immigration Studies conducted in 2005 revealed that H-1B workers are overwhelmingly concentrated at the bottom of the U.S. pay scale and a

significant number of these workers earn less than the prevailing wage employers claim. In fact many earn \$13,000 less than Americans in the same position and geographic location.

There are many reasons for this pay disparity, the first being that employers often use the incorrect pay rate by relying on unreliable sources—like the employer's own surveys, salary-related Web sites and classified sections of trade publications—to determine the prevailing wage. Moreover, when using the Department of Labor's (DOL) Occupational Employment Statistics to determine the prevailing wage, employers often underestimate the job level of the position they are trying to fill or choose the incorrect match for the job.

The DOL contributes to this problem by not scrutinizing the prevailing wage rate the employer lists in its application. The employer often assumes it has passed the prevailing wage test when the DOL approves the H-1B application. In too many instances this is not the case, and as a result, H-1B workers are not paid their worth.

Ironically, the DOL, which just approved the H-1B application, can then turn around and fine a company for fail-

ing to pay the prevailing wage. Once that Pandora's box opens, the corporation could be forced to pay back wage awards (which can range into the millions of dollars), civil penalties and interest. It also would face sanctions such as debarment from participating in the H-1B visa program as well as possible exposure to national origin and citizenship status discrimination claims.

To fix the problem, the Department of Labor and corporations must work collaboratively to ensure H-1B workers are adequately compensated.

During the application stage, for instance, employers should consult the State Workforce Agency (SWA) that has jurisdiction over the geographic area of intended employment.

The SWA has a form that allows an employer to submit information about the job at issue, which the SWA will review before making an assessment and issuing a salary determination.

In addition, employers must have a process in place to ensure consistency in hiring and administering terms and conditions of employment for all employees. This process includes reviewing job descriptions, evaluating job classifications, monitoring compensation and

ensuring equal pay for people with similar credentials performing the same work.

Furthermore, the DOL must take a more hands-on approach in assessing the employer's cited prevailing wage during the application process. This would require the DOL to cross-check the prevailing wage with the going rate in the job's geographic location. Such a procedure must be more efficient than rubber stamping the salary range and then waiting for H-1B or American workers to lodge a complaint (through ESA Form WH-4) about an employer's alleged violations of wages, benefits and working conditions.

When employers put procedures in place that eliminate pay inequity, they reduce the risks of penalties and litigation and ease the financial suffering of H-1B workers. And when corporations pay H-1B workers the prevailing wage, they create a more productive work force that can give them a competitive edge in the marketplace.

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