Print on Letterhead

# *Guidelines for Determination of Actual Wage for H-1B Sponsorship*

The Department of Labor (DOL) defines actual wage as the ***“wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question”*** (see 20CFR§655.731).

In determining such wage level, the following factors may be considered: ***experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors***. Where there are other employees with substantially similar experience and qualifications in the specific employment in question, i.e. they have substantially the same duties and responsibilities as the H-1B employee - the actual wage should be the amount that is paid to these comparable employees. Where no such other employees exist at the place of employment, the actual wage should be the salary paid to the H-1B employee.

A careful examination of the definition of these factors as stated in the DOL regulations (see below) will help you determine the actual wage.

**1) Experience:** Is the work experience of other individuals employed by the University in the specific occupation the same as that possessed by the H-1B employee, e.g. *length, type, depth or breadth and depth of experience*?

**2) Qualifications:** Are the job qualifications of the other employees in the specific occupation the same as the H-1B employee’s qualifications, e.g. *advanced degrees, particular skills, abilities, training, licensure*?

**3) Education:** Are the educational attainments or achievements of the H-1B employee and other individuals employed in the specific employment similar, e.g. *degree level, GPA, class rank, reputation of school, academic honors, specific related courses, relevant thesis or research*?

**4) Job Responsibility and Function**: Are the H-1B employee’s actual job duties, responsibilities and functions substantially similar to those of other workers employed in the specific occupation, e.g. *major/significant tasks,* *supervisory role, exercise of discretion, demonstrated decision-making ability*?

**5) Specialized Knowledge**: Is there any specialized knowledge held by the H-1B employee that warrants a difference in pay, e.g. *specialized research field, knowledge about procedures, products*?

**6) Other Legitimate Business Factors**: Are there other legitimate business factors which can be shown to provide a bona fide basis for justifying different compensation levels for H-1B employee and other workers employed in this specific field? The Legitimate Business Factors must be directly related to the job in question, e.g. *professional publications; development of a particular patent; recipient of an international prize; or other meritorious performance rewarded by an existing pay system.*

Factors that are **not permissible** in establishing a different actual wage for the H-1B worker are: (a) sex, (b) race, (c) national origin, (d) age, (e) religion, (f) alien’s willingness to work for less, (g) alien salary parity with peers in their country of origin, or (h) alien’s abilities or qualifications irrelevant to the position and i) market conditions.

**I confirm that I have read and understood the above information and agree on behalf of my department/college that the subject petition is in accord with and adheres to both the letter and spirit of the information detailed above. In addition, I understand that it may be necessary to increase the salary of the H-1B employee to the required actual wage so that the H-1B petition can go forward. I further I understand that if the salary is not adjusted to the required actual wage, the H-1B petition will be halted.**

***Signature of hiring supervisor, preparer or approver:***

***Name (PRINT):***

***Job Title (PRINT):***

***Date:***