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Notes Regarding Actual Wage Memorandum for Public Access File

If the employer has an established wage scale with amounts and criteria it may be used and there is no need to prepare a memo similar to this one. Otherwise, this memo must be prepared prior to filing of the LCA.

It should provide a third party with sufficient information about your wage structure to estimate the wage you would normally pay an H-1B employee having comparable qualifications and/or experience to that of the U.S. worker.

This memorandum is used to establish the actual wage paid U.S. workers in the same position as H-1B employees.

The sample language below can be used, but bear in mind the following considerations.

Calculation of Actual Wage:

The confidential personnel file for the H-1B employee should contain a worksheet calculating the wage indicating the basis for applying the upper or lower end of the range for each variable, and a statement of the relevant qualifications considered.

It would also be helpful to have on hand the profiles of wages and relevant qualifications of several U.S. workers paid a similar amount to the H-1B employee.

Reviews & Promotions:

When wages are reviewed periodically, the personnel file will need to be updated with a copy of a written evaluation and calculations to show the H-1B employee was given the same adjustment given to U.S. workers with similar evaluations.

However, if the actual wage you would normally pay the H-1B employee is below the prevailing wage, you must pay the H-1B employee the higher prevailing wage, and you are not required to adjust the H-1B employee's wage.

Unacceptable Factors:

Sex, race, age, national origin, religion, willingness of the H-1B employee to work for less, H-1B employee parity with peers in their country of origin, or abilities/qualifications that are irrelevant to the position.

Overqualified Workers:

In setting the wage, the employer is not required to make adjustments for skills which are beyond the minimum qualifications needed to perform the job duties.

You must be consistent. If you make adjustments for non-H-1B employees who are overqualified for the position, then you must make adjustments for H-1B employees who have similar qualifications.

Actual Wage Memorandum for Public Access File (SAMPLE)

ACME Corporation bases wages on the experience, qualifications, job responsibilities and functions of each employee.

Wages may also be affected by specialized knowledge a specific worker will be able to contribute to her assignments.

Wages are reviewed annually with an increase ranging from \$500 to \$1,000 or of approximately 7.5 percent depending on performance and business conditions.

ACME Corporation maintains a wage policy which dictates an entry-level wage for a Systems Analyst in the range of \$90,000 to \$95,000 per year.

Currently the company employs one US worker Systems Analyst at an entry level. This person's wage, \$90,000 is the actual wage for the job.

The wage offered to the H-1B employee, \$83,000 per year reflects the H-1B worker's skills with Oracle implementation experience.

OR

The company typically pays an additional \$5,000 per year for experience in the position or a similar position at a prior employer.

This amount will be adjusted upward or downward approximately \$1,000 depending on performance. If using this approach be sure it is applied consistently by using a grid similar to that below.

OR

Currently the company employs 4 US worker System Analysts at an entry level.

Their names, current wages, education, experience and skill profiles are in the confidential memo which is not part of our public access file but will be available for DOL inspection.

Name: Joe Smith
Wage as of 11/01/2011: \$90,000 / Year
Education: Bachelor Degree
Prior Exp.: None
Hire Date: 06/15/2011
Starting Wage: \$90,000 / Year

Name: Sam Johnson
Wage as of 11/01/2011: \$91,000 / Year
Education: Master Degree
Prior Exp.: 1 year
Hire Date: 07/15/2011
Starting Wage: \$90,000 / Year

Name: Paul Wilson
Wage as of 11/01/2011: \$90,000 / Year
Education: Bachelor Degree
Prior Exp.: None
Hire Date: 08/01/2011

Starting Wage: \$90,000 / Year

Name: James Tildon

Wage as of 11/01/2011: \$92,000 / Year

Education: PhD

Prior Exp.: 2 years

Hire Date: 08/15/2011

Starting Wage: \$90,000 / Year

Whenever wage adjustments are made in wages of workers similarly employed, such as cost of living increases, merit increases other periodic adjustments, or calculation of a higher entry rate for the occupation, ACME Corporation will adjust the wage of the H-1B worker accordingly.

Notations of the occurrence of these adjustments, and of any future promotions, will be reflected in an attachment to this memo.

Calculations of the amount will be placed in the employee's confidential personnel file and not in this public access file.

Sample notation of wage adjustment for Public Access File:

Effective November 1, 2011, ACME Corporation Entry Level System Analysts were given a wage adjustment of \$1500 per annum.

Alternative approach: Effective November 1, 2011, ACME Corporation Entry Level Systems Analysts were given a wage adjustment of \$1000 with good performance in the prior year, \$1500 with excellent performance level and \$2000 with outstanding performance rating.