

## How to determine the correct prevailing wage level

*A recent AAO decision and USCIS teleconference, suggest that using a wage level that is not consistent with the most recently issued [DOL policy guidance](#) (i.e. based on the employer's minimum requirements) could result in an insurmountable RFE and consequently an unavoidable denial.*

For Job zones 2 through 5 (most H-1B positions are Job Zones 4 or 5) the DOL Policy Guidance states the following criteria with respect to education and experience requirements.

1. All jobs start with a Wage level 1 before any analysis is done
2. Review what is the normal ("generally required") level of education (Bachelor's, Master, etc.) for a particular position. See **Job Zone** section for your particular SOC code at <https://www.onetonline.org/>
  - a. If the education level required by the employer is equal to or below what is normal for the position then you add no additional wage level.
  - b. If the education level required by the employer is higher than what is normal for the position then you add 1 additional wage level for each level of education above what is normal. For e.g. if
    - i. the employer requires a PhD and a Bachelor's degree is normal for the position then you would add 2 wage levels;
    - ii. the employer requires a Master's requirement where a Bachelor's is normal you would add 1 wage level.
3. The years of experience required is easiest described utilizing a specific Job Zone (JZ).

JZ4 four has an SVP Range of 7.0 to < 8.0.

This translates to 2.1 years to and including 4 years.

- a. If the employer's minimum years of experience is equal to or below the low end of the range (2.0 years or less) no wage level is added.
- b. If the employer's minimum years of experience is in the low end of the range (2.1 to 3.0 years) 1 wage level is added.
- c. If the employer's minimum years of experience is in the high end of the range (3.1 to 4.0 years) 2 wage levels are added.
- d. If the employer's minimum years of experience is more than the high end of the range (4+ years) 3 wage levels are added.

4. If the position requires supervision and supervision is not generally required for this type of position (for e.g. 11-3021.00 - Computer and Information Systems Managers) then 1 wage level is added).
5. If it is normal for the position to supervise then no wage level is added.

Here are some examples.

### **Example 1**

Your position is a Software Engineer II.

The relevant SOC code may be <https://www.onetonline.org/link/summary/15-1199.02>.

This is a JZ4 resulting in SVP 7 with a normal requirement of Bachelor's degree and range of experience of more than 2 years up to and including 4 years.

If your minimum requirements for the position are a Master's degree in Computer Science or related field, plus 3.5 years of experience the analysis would be as follows:

You start with Wage level 1.

Your education requirement is one category above what is generally required (Bachelor's) therefore add 1 wage level.

Your experience requirement is in the high-end of the range therefore add 2 wage levels.

This results in a level 4 wage.

### **Example 2**

Your position is a Rehabilitation Manager.

The relevant SOC code may be <https://www.onetonline.org/link/summary/11-9111.00>.

This is a JZ5 resulting in SVP 8 and above with a normal requirement of Ph.D, M.D. or J.D degree and range of experience of more than 4 years.

If your minimum requirements for the position are a Master's degree in Physical Therapy or related field, plus 6 years of experience and supervision of 30 employees the analysis would be as follows:

You start with Wage level 1.

Your education requirement is below the category as what is generally required (see above) therefore no wage level is added.

Your experience requirement is at the low-end range therefore 1 wage level is added.

Supervision is generally required for this position therefore no wage level is added.

This results in a level 2 wage.

You will note that although the requirements are much higher than in **Example 1** the wage level in this example is lower because the JZ and resultant SVP (i.e. what is generally required for this position) is higher.

### **Example 3**

Your position is a Software Engineer I.

The relevant SOC code may be <https://www.onetonline.org/link/summary/15-1199.02>.

This is a JZ4 resulting in SVP 7 with a normal requirement of Bachelor's degree and range of experience of more than 2 years up to and including 4 years.

If your minimum requirements for the position are a Bachelor's degree in Computer Science or related field, plus 2 years of experience the analysis would be as follows:

You start with Wage level 1.

Your education requirement is in the same category as what is generally required (Bachelor's) therefore no wage level is added.

Your experience requirement is below the low-end range therefore no wage level is added.

This results in a level 1 wage.

It should be noted that historical data from our law firm shows that almost all Prevailing Wage Determinations by the DOL where the circumstances were the same as **Example 3**, a level 2 wage was issued by the DOL.

However, USCIS (as upheld by the AAO) has denied petitions where the employer selected the incorrect wage level, based on an analysis pursuant to the DOL Policy Guidance.

Based on all of the information currently available we recommend that the DOL Policy Guidance be followed with respect to H-1Bs.

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