



Mar 20, 2020

Categories:

[Coronavirus Response](#)

[Team](#)

[Publications](#)

Authors:

[Alicia M. Visse-Kroger](#)

COVID-19 Business Disruptions and the Legal Implications for H-1B Employees

While COVID-19 has employers grappling with a slew of uncertainties and problems, it is important for businesses employing H-1B visa holders to consider the unique impact safety measures and business decisions might have on H-1B employees.

Working from Home

Many employers are encouraging or mandating telecommuting, and many employees are working from home due to a precautionary self-quarantine, or a mandatory quarantine due to possible exposure. For most employees working from home is simply a conversation with their employer. For H-1B employees there are significant legal ramifications.

All H-1B petitions must be supported by a Labor Condition Application (LCA), whereby the sponsoring company certifies to the Department of Labor that the employer will comply with applicable laws and pay the applicable prevailing wage. H-1B employees are generally only permitted to work at the specific worksite address or addresses listed on the LCA. This includes working from home—an H-1B employee ordinarily cannot work from home unless their home address is listed as one of the worksites on the LCA. Changing the worksite can require procuring a new LCA and filing an H-1B amendment—a process that may be too time-consuming and costly to be practical as employers act in response to COVID-19.

There is an exception that can apply if: (1) the new worksite is within the same metropolitan statistical area as the worksite listed on the LCA, and (2) the employer posts the existing LCA at the new worksite in accordance with the regulatory notice requirement and before the employee starts work at the new site. This would require posting the LCA at the H-1B employee's residence but would then enable the employee to work from home.

Change to Business Operations

Changes to normal business operations also have legal implications for H-1B employees. If an H-1B employee requests a leave of absence because they are unable to work or for their convenience, an employer can grant unpaid or paid leave, subject to their leave policies. H-1B employees must be offered the same benefits that are offered to all other employees, but unpaid leave is permitted in this circumstance. This might apply, for example, if an employee requires time off due to contracting COVID-19, to care for a sick family member, or needs time off due to school closures and a lack of childcare.

If an employer, however, chooses to temporarily shut down the business due to lack of work and the H-1B employee is placed in non-productive status, the employer *must continue to pay H-1B employees the full wage listed on the LCA*. The Department of Labor regulations specifically prohibit furloughing H-1B employees without pay, so employers are faced with the choice of continuing to provide full pay to those employees—even if there is no work to perform—or severing employment.

If an employer chooses to lay-off or terminate H-1B employees due to scaling back operations, the employer is obligated to notify U.S. Citizenship and Immigration Services (USCIS) of the H-1B worker's end of employment. Upon termination, an H-1B worker can remain in the U.S. for up to 60 calendar days (or until the expiration of their I-94 admission record, whichever is earlier) to seek other employment or wrap up their affairs. If the H-1B worker ultimately departs the U.S., the terminating employer is obligated to pay the worker's return trip back to his or her home country.

If an employer lays off an H-1B employee with the intention of later recalling them, the most conservative course of action would be to notify USCIS of the end of employment, and then, before the employee's legal period of authorized stay expires, file a new H-1B petition seeking to reemploy the laid-off worker.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your

questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.