

Instructions for Form 2 “Actual Wage Determination” and “Memorandum for Labor Condition Application (LCA) File”

Before an employer can submit a petition to USCIS requesting H-1B status for a specific position on behalf of a foreign national who needs the H-1B work benefit, US law requires the employer to document with the US Department of Labor (DOL) via the LCA that the employee will be paid the “**required wage**”, which is the higher of either the “prevailing wage” or the “actual wage”. The “prevailing wage” for a position is determined by the State Employment Security Agency, aka State Workforce Agency (SWA), in the location of the employment. The “**prevailing wage**” is based upon the position description provided to SWA by the employer. The “actual wage” is determined by and documented by the employer. The “actual wage” information is required to be maintained by the employer in a file for DOL review. The “**actual wage**” is the wage being paid to “comparable” employees. “Comparable” employees are those who now hold the same job title and have similar education and experience as the foreign national to be hired.

To document the “actual wage”, the sponsoring MUSC department is required to list **all employees** (by title, employee ID number and current salary) which are currently employed with the same job title and are performing similar tasks as those described for the position to be filled by the foreign national. Then the department must decide which of the listed employees are “comparable” to the applicant (see “comparable” definition above).

If a current employee who holds the same job title is not considered as being comparable, the department must provide legitimate business reasons why that employee’s wage level is not comparable to the foreign national’s wage offer. If additional space is needed, departments may choose to develop a separate list of all similarly employed individuals containing the required information and attach the list to Form 2. Do not use employee names. **If the proposed salary on Form 1 Position Information is not equal to or higher than the “required wage”, MUSC is not able to process an H-1B petition for this position. The foreign national will not be hired in the MUSC position.**

The DOL has ruled that only certain criteria may be used as legitimate business reasons related to higher education to eliminate other employees from comparison. (*Please see additional information for “actual wage” in the FAQ section and in the H-1B Petition Requirements and Instructions for Filing.*)

Valid criteria for stating that an employee is not comparable:

- The current employee has more relevant work experience than does the foreign national
- The current employee has more responsibility than the foreign national will have
- When hired, the current employee had better educational credentials for the position than does the foreign national or had a higher level of education than was required for the position
- The current employee does not work the same number of hours as will the foreign national

Criteria determined by DOL to be invalid for determining employee comparability:

- The instant position is funded by a different grant
- The grant does not have enough funds to pay the “required wage” for the instant position
- The current employee works in a different area of research/teaching/patient care within the department than will the foreign national
- The current employee demanded more salary when hired
- A salary freeze (past or present) has caused or is causing a different wage to be offered

Return the completed Form 2 Actual Wage Worksheet and Memorandum to the Labor Condition Application (LCA) File to the Office of International Support in Room 454-Harper Student Center. If you have any questions regarding the “actual wage” determination, please contact us at 792-7083.

**Form 2 Actual Wage Determination Worksheet and
Memorandum for LCA File-(fillable)**

Department/College where position is located _____

Applicant's name _____

Applicant's highest degree and field of study _____

Applicant's number of years of work related experience (not including student work) _____

Applicant's number of years of work related training (specify type, e.g. 3 yrs postdoc) _____

Title of position to be filled by applicant named above _____

Proposed salary (per year if fulltime position, per hour if part-time position) \$_____per_____

Position Description/Responsibilities (must be same as described on Form 1 Position Information on which is determined the "prevailing wage") _____

Degree required and field of study to fill the position (if "related field" was acceptable, must also specify which related field[s]) _____

Experience required to fill the position in years (if none, so state) _____ If experience was required, what type of experience? _____

Training required to fill the position in years (if none, so state) _____ If training was required, what type of training? _____

List any specialized knowledge required to fill the position (if none, so state) _____

Number of current employees in the department holding the same job title as position to be filled _____

List all those employees who hold the same job title and are performing similar responsibilities by their MUSC employee ID, current title and current salary. (Do not use names. Use additional sheet if necessary).

- A.
- B.
- C.
- D.

From the list above, specify which of the employees are NOT comparable to the applicant. Enter the MUSC employee ID # and list the valid criterion or criteria which describe(s) why that employee is not comparable. (See instructions for valid criteria. Use additional sheet if necessary) _____

My name and title (print) _____

My signature _____ Date _____

Form 2 Memorandum to Labor Condition Application File

Department/College where position is located _____

Position title and specific, physical address where duties will be performed _____

In this department there are _____ number of comparable employees holding the same position title and performing similar job duties as the position listed above. The salary range for those who are comparable to the foreign national are: (if full-time, per year; if part-time, per hour)

\$ _____ to \$ _____ per _____

Within the salary range above, a comparable individual's salary is determined by considering the factors checked below.

____ Level of education related to what is required by the position

____ Level of experience and training related to what is required by the position

____ Level of job duties and responsibilities has increased since being hired

____ Specialized knowledge relevant to the position

____ Other legitimate business-related factors which are used by this department to determine salary as listed below:

I hereby certify that the actual wage determination provided on Form 2 reflects accurate information of all similarly employed individuals working in this department. I am able to provide evidence of any wage differences among the similarly employed individuals working in this department based on the legitimate business-related criteria listed above.

My name and title (print) _____

My signature _____ Date _____