

## **MAINTAINING LAWFUL H-1B TEMPORARY WORKER STATUS**

In order to maintain your lawful status as an H-1B, you must:

- 1) Engage **only** in the activities as approved by the United States Citizenship and Immigration Services (USCIS) on your H-1B petition. You cannot move to another FDA Center, laboratory or geographic location without FDA and DIS/NIH approval.
- 2) Any changes in your employment---job duties, salary, lab, sponsor, geographic location, level of patient contact, new funding source---must be pre-approved by the FDA, DIS/NIH, and in some occasions, USCIS. You are required to notify the FDA and DIS/NIH of any such changes **BEFORE** they occur.
- 3) **NO unauthorized employment is permitted. DO NOT** work outside of your FDA Center lab/branch.
- 4) Work only as approved on your Form I-797 and maintain a valid, unexpired form at all times.
- 5) Notify USCIS of a change of residential address within **10 days** of your move. Use Form AR-11 (or AR-11SR if subject to Special Registration) to notify USCIS. Please also notify FDA and DIS/NIH of your change of address.
- 6) Maintain a valid passport and Form I-94 Arrival/Departure Record at all times.
- 7) You must notify FDA and DIS/NIH when you end your employment---regardless if you will be leaving the U.S. or transferring to another H-1B employer.
- 8) Depart within 10 days from the end of your employment or end date on Form I-797 (whichever occurs first). There is no grace period!
- 9) **Unlawful Presence** occurs when you stay beyond the end date of your Form I-94 Arrival/Departure Record or upon determination by the U.S. Citizenship and Immigration Services (USCIS). There are serious consequences to staying unlawfully in the US. The consequences include a 3-year bar from reentering the US if you have stayed unlawfully in the US for 180 days or more, and a 10-year bar if you remain unlawfully in the US for 360 days or more. Violation of your H-1B status does not necessarily make you unlawfully present, although it does make you ineligible for any immigration benefit. Before this occurs, please consult DIS/NIH if you have any questions about maintaining your status.

## ADDITIONAL INFORMATION

- 1) The **Form I-797** is the approval notice of your H-1B petition. The form is issued only by the USCIS. DIS/NIH obtained the approval notice after filing an H-1B petition with the USCIS on behalf of the FDA.
- 2) Notify FDA and DIS/NIH at least **2 weeks** before travel outside the U.S. Specifically note if you will be applying for a new entry visa while you are abroad. Please review our handouts or website on recommended travel procedures.
- 3) Notify FDA and DIS/NIH of any changes in your employment (such as changing FDA Centers or laboratories/branches) **BEFORE** such changes occur.
- 4) If you move (your home residence) while in the US, you must notify **USCIS** within **10 days** of the move. You must file **Form AR-11** with the USCIS. If you are a "Special Registration" individual, you must file Form AR-11SR with the USCIS. Please also notify FDA and DIS/NIH of your change of address. To notify DIS/NIH, complete our "DIS Change of Address Form" on the Forms page of our web site ([http://dis.ors.od.nih.gov/fda/01\\_fdaforms.html](http://dis.ors.od.nih.gov/fda/01_fdaforms.html)).
- 5) Have the FDA Center apply for extension of your H-1B employment through the DIS/NIH (if you are eligible and if the FDA Center is interested in continuing your position) **at least 4 months prior to the expiration of your current Form I-797**. Keep in mind that the maximum allowable time in H-1B status is 6 years (in limited circumstances, it may be possible to extend beyond the sixth year).
- 6) The H-1B allows immigrant intent. This means that your status is not violated if you apply for LPR (lawful permanent residence).
- 7) Notify FDA and DIS/NIH if you change to another immigration status, file a petition for LPR, and/or adjust your status to lawful permanent resident.
- 8) H-1Bs are required to file both state and federal tax returns.
- 9) At the end of your employment, as indicated on your Form I-797 or your last day at FDA if you terminate earlier, you must depart the U.S. within 10 days. There is no grace period.
- 10) Transfer to another H-1B employer is possible only if the new employer files a new H-1B petition with USCIS for you to work for the new employer. Under H-1B portability, you may be able to begin work for the new employer before USCIS approves their H-1B petition. You must check with the new employer for their policies. You must also **notify FDA and DIS/NIH** when switching employers. Please see # 11 below.
- 11) Notify FDA and DIS/NIH when ending your employment so that DIS/NIH can comply with notification and reporting requirements.

- 12) As an H-1B, you must request and receive written permission from FDA and DIS/NIH for incidental employment related to program activities **prior** to the dates of employment. U.S. Government workers are covered by strict rules related to outside employment.
- 13) After being in H-1B status for 6 years, you must have a break of 1 year **OUTSIDE** the U.S. to be eligible to begin a new H-1B (i.e. get another 6 years).
- 14) Change of Status from H-1B or H-4 is possible only if such application is filed timely.
- 15) H-4 dependents are **NOT** eligible to work in the United States. To work, the dependent must apply for a change to another immigration status that allows employment, such as finding an employer willing to sponsor the dependent for his/her own H-1B