

Article: H-1B Prevailing Wages and Alternative Surveys Szabo, Zelnick & Erickson, P.C.

Filing an H-1B petition requires strategic planning and careful preparation. One factor often overlooked is the need to pay the sponsored employee 100% of the prevailing wage for the offered position. Prevailing wage guidelines can be found through the Department of Labor's Occupational Employment Statistics (OES), by entering the work site (by state and county) and the occupational classification into the online wage library (<http://www.flcdatacenter.com/OesWizardStart.aspx>). Additionally, you can confirm the prevailing wage for an offered position by submitting a prevailing wage request to a State Workforce Agency in order to receive a prevailing wage determination.

Did you know, however, that you are not tied to the Department of Labor's online wage library for the H-1B prevailing wage? If the position is not covered by a collective bargaining agreement, an alternative wage survey can be used. This includes private surveys obtained by the employer. Many businesses use these private surveys anyway to determine the appropriate level of compensation for employees throughout the company. If the employer does not already subscribe to a private survey, some private surveys are available on an individual basis for a fee. This can be helpful where the Department of Labor's online wage library is not in line with the salary offered to the H-1B beneficiary employee.

If you decide to use an alternative wage survey, you'll need to make sure the survey meets the Department of Labor's standards. These standards include the following:

- The data must be current - collected within 24 months of the publication date of the survey.
- The survey must be current – use the most current edition and be sure it was published within 24 months of the date of submission of the Labor Condition Application.
- The data must be for the relevant job and area - representing similar jobs in the area of intended employment—generally considered an area within commuting distance of the H-1B worksite.
- The job descriptions for the survey job and the offered H-1B position must match.
- The data must have been collected across industries that employ workers in the same occupation as the H-1B offered position.
- The survey should include the mean/weighted average/median of wages for workers in the appropriate occupational classification in the area of intended employment.
- The survey must identify the methodology that was used to collect the data.

Jerry Erickson is the managing partner of Szabo, Zelnick, & Erickson, P.C.(www.szewelaw.com), in Woodbridge, Virginia. He is the senior attorney in the firm's Business Immigration Section. He has practiced law for over 20 years and represents clients in numerous complex areas of immigration law. He can be reached at jerickson@szewelaw.com or (703) 494-7171.

The above information is provided for informational purposes only. The information should not be construed as legal advice and does not constitute an engagement of the Szabo, Zelnick & Erickson, P.C. law firm or establish an attorney-client relationship with any of its attorneys. An attorney-client relationship with our firm is only created by signing a written agreement with our firm.