

When You Need An Amended H-1B Petition, Simeio Solutions Decision

Labor & Employment Law Update

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H-1B employee mobility makes USCIS uncomfortable.

In fact, on April 9, 2015, the USCIS Administrative Appeals Office (AAO) set a new precedent via the *Matter of Simeio Solutions LLC*. **The AAO determined that a worksite relocation outside of the intended area of employment on the original H-1B petition qualifies as a material change to the petition.** H-1B employers are now required to file an amended petition for the employee before placing them at the new worksite. The U.S. Citizenship and Immigration Services finalized guidance based on the *Simeio Solutions* decision in a Policy Memorandum issued on July 21, 2015.

Where a new Labor Condition Application (LCA) used to suffice with a new worksite, H-1B employers are now required to file an amended or new H-1B petition as well. As you can imagine, this creates a lot of paperwork and increases costs for H-1B employers. There are some exceptions to the ruling:

1. **Same “intended area of employment”** – If the H-1B employee is moving to a new position within the same metropolitan statistical area (MSA), no amended petition is necessary. The employer is required to post the original LCA at the new worksite as usual.
2. **Short-term placements** – In certain cases, an H-1B employee can work at a new location for up to 30 days or in some situations up to 60 days without necessitating a new LCA. In those cases, no new or amended petition is necessary.
3. **Non-worksite locations** – H-1B employees traveling for a development activity such as a conference or seminar, and those who spend little time at any one location are exempted from the need for a new or amended petition. And peripatetic employees are exempt if they spend no more than 5 consecutive workdays at the worksite location in any one visit.

Employers who have relocated H-1B employees not covered by the exceptions above need to prepare amended or new H-1B petitions. The *Simeio* decision is effective based on the following:

- For H-1B employees **relocated to a new worksite on or before April 9, 2015**, employers must file a new or amended petition by January 15, 2016. Any employer who has received an intent-to-revoke notice due to the lack of amended petition may avoid revocation by filing the petition by this date.
- For H-1B employees **placed at a new worksite between April 9 and August 19, 2015**, employers must file a new or amended petition by January 15, 2016 to be considered timely and to avoid adverse action.
- For H-1B employees **to be placed at a new worksite on or after August 19, 2015**, employers must file a new or amended petition before employee starts working there.

If the rules seem complicated, that's because they are. Compliance requires some thought, creativity, and careful management.

If you have assigned H-1B employees to new locations or are planning to, or have peripatetic H-1B employees, please call me at 630-587-7988 or e-mail me at jlentini@salawus.com so I can help you stay in compliance.

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