Name of Policy: **New and existing H-1B visa employees**

Policy Number: 3364-25-60

Approving Officer: President

Responsible Agent: Vice President for Administration; Director of International Student and Scholar Services; Immigration Advisor

Scope: All University of Toledo Campuses

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(A)  **Policy statement**

New and existing H-1B visa employees must not work outside of the hours listed within the H-1B I-129 Petition for that particular employee.

(B)  **Purpose of policy**

To ensure that H-1B visa employees not perform work outside those core hours indicated in their ordinary contract with the university.

For new H-1B employees, to ensure that realistic start dates of employment are given on Offer Letters, so that pre-employment hiring requirements are completed in advance of the Offer Letter’s start date and H-1B start date.

For existing H-1B employees, to ensure that if non-payment of salary or wage occurs, that the reason for the non-payment is due to conditions unrelated to employment, which take the H-1B employee away from his/her duties at his/her voluntary request and convenience (e.g. caring for ill relative), or render the H-1B employee unable to work (e.g. maternity leave).

(C)  **Procedure**

This Policy applies to the following four scenarios:

1. New H-1B employees on an H-1B with a U.S. employer leading up to employment at UT;
2. New H-1B employees either not inside the U.S. (no status), or in the U.S. working on another employment visa elsewhere;
(3) Existing employees on another employment visa at UT, and they are changing status to an H-1B; and
(4) Existing H-1B employees (post H-1B approval).

For **new H-1B employees**, the following must occur:

- The point-of-hire and/or hiring department must clearly and consistently communicate with the Office of International Student & Scholar Services (OISSS) when they desire to have the H-1B employee commence employment; and

- The point-of-hire and/or hiring department must be aware that they are required to pay the full salary or wage to the H-1B employee during the pre-employment hiring requirement period, if they requested the H-1B period of validity commence before the pre-employment hiring process commences;

To ensure payment of a salary or wage is minimalized or avoided during the pre-employment hiring requirement period, the point-of-hire and/or hiring department must communicate with OISSS on realistic start dates that take into consideration H-1B processing times and the length of time the pre-employment hiring requirement period will take to be completed.

For **existing H-1B employees**, the following must occur:

- If full or partial non-payment of salary or wage occurs within any pay period, that the reason for the non-payment is immediately documented by the point-of-hire and/or hiring department; and

- That the point-of-hire and/or hiring department immediately inform OISSS of the reason for the non-payment of salary or wage within the particular pay period(s).

For purposes of this policy, “...a decision by the University...” includes but is not limited to the following:

Lack of assigned work, lack of a permit or license, short-term furlough, pre-employment hiring requirements related to drug-testing, background checks, orientation, etc., and lack of or pending social security number.

In these cases, the H-1B employee must be paid the full pro-rata salary or wage, provided the H-1B petition has been *filed* with the USCIS by OISSS in scenario # 1 above, or if the H-1B petition has been *approved* by USCIS in scenarios # 2 – 4 above.
An H-1B employee may be paid LESS than the full pro-rata salary or wage listed on the H-1B I-129 Petition, but only in the following circumstances:

1. The employee fails to show for work and his/her employee class is such that they are not to be paid for not appearing, or s/he has used all of their paid time-off, including but not limited to vacation time. This also includes unpaid time off due to emergencies that are not covered under FMLA, including disability (e.g. temporarily incapacitated due to automobile accident) and any other scenario by which the H-1B employee is unable to work;
2. The employee voluntarily decides to not work, and that employee does not have any paid time-off (e.g. vacation) remaining;
3. Employee takes FMLA leave.

An H-1B employee’s salary or wage shall immediately cease once there has been a bona fide termination of the employment relationship.

Approved by:

Lloyd A. Jacobs, M.D.
President

May 25, 2012
Date

Review/Revision Completed by:

Vice President for Administration
Office of International Student & Scholar Services

Policies Superseded by This Policy:

- None

Initial effective date: May 25, 2012
Review/Revision Date:
Next review date: May 25, 2015