

# H-1B visa needs reform to make it fairer to migrant and American workers

Fact Sheet • By Daniel Costa • April 5, 2017

The H-1B program provides temporary, nonimmigrant U.S. work visas for college-educated workers and fashion models from abroad. While no one can deny the importance of attracting skilled, talented workers to the United States, the reality is that the biggest beneficiaries of the H-1B program are outsourcing companies that have hijacked the system—using between one-third to one-half of the visas—to replace thousands of U.S. workers with much-lower-paid H-1B workers while also sending tech jobs abroad.<sup>1</sup> In addition, these outsourcing companies rarely provide H-1B employees with a path to permanent residence and citizenship. Outsourcing companies, however, are not the only abusers of the system: The vast majority of employers that hire H-1B workers pay them wages below the local average for the occupation.

## We need to reform the H-1B program to make it:

- Fairer to U.S. workers, who should have the first opportunity to apply for jobs in the United States
- Fairer to H-1B workers, who deserve fair pay for their work according to U.S. wage standards and who should not have to fear retaliation and exploitation by employers

## Major flaws in the H-1B program

**U.S. employers don't have to recruit U.S. workers before hiring H-1B workers.** Employers and corporate lobby groups claim that they use the H-1B primarily to bring in the “best and brightest” workers from abroad to fill labor shortages in science, technology, engineering, and math fields (STEM). But despite this widely held belief, the contrary is true:

- Employers are not required to recruit U.S. workers or prove they are experiencing a labor shortage before hiring H-1B workers.
- “H-1B-dependent” employers (those filling 15 percent or more of their U.S. jobs with H-1B workers) are required to recruit U.S. workers first, but they get around the requirement with a cheap and easy loophole: they can hire an H-1B worker who holds a master's degree or pay the H-1B worker an annual salary of over \$60,000. For comparison, \$60,000 is \$21,000 *lower* than the national median wage for all workers employed in computer occupations (**\$81,430**).<sup>2</sup>

**U.S. employers can legally underpay H-1B workers.** Corporate lobbyists and other H-1B proponents claim that H-1B workers cannot be paid less than U.S. workers because employers must pay H-1B workers no less than the “prevailing wage.” That is true in theory but:

- Employers have the option of paying the prevailing Level 1 “entry-level” wage or Level 2 wage, both of which are well below the average wage (Level 3) that local employers pay workers in similar jobs.
- While the wage level is supposed to correspond to the H-1B worker’s education and experience, in practice the employer gets to choose the wage level and the government doesn’t check unless a lawsuit or a complaint is filed by a worker.

Here’s what wage savings can look like for H-1B employers: The average **software developer in the Silicon Valley** commands a salary of \$147,000 per year, but an H-1B software developer earning the Level 1 wage is paid \$102,000. That’s a savings of \$45,000 per H-1B worker per year for up to six years.<sup>3</sup>

**The top 10 H-1B employers use the program for cheap, temporary labor rather than as a bridge to permanent immigration.** The H-1B visa is considered a “dual-intent” visa, which means that employers have the option of sponsoring their H-1B workers for lawful permanent resident (LPR) status, which can then lead to citizenship. But the top 10 H-1B employers sponsor very few workers for LPR status. In 2014, Tata Consultancy Services, the top H-1B employer that year, hired 5,650 new H-1B workers but only filed for two permanent labor certifications.<sup>4</sup>

**H-1B workers are often exploited and often arrive in debt, and they are tied to their employers.** The H-1B visa itself is owned and controlled by the employer; an H-1B worker who is fired or laid off for any reason becomes instantly deportable. H-1B workers often pay large fees to labor recruiters, which means that many arrive virtually indentured to their employer, fearing retaliation and termination if they speak out about workplace abuses or unpaid wages. And widespread abuses have been documented—even human trafficking and severe financial bondage.<sup>5</sup>

**Outsourcing companies are using the H-1B program to replace U.S. workers and send tech jobs abroad.** The top 10 employers of H-1B workers are not innovative high-tech firms like Apple and Google. The biggest users of the H-1B visa are outsourcing/offshoring companies that specialize in information technology (IT). Typically, H-1B workers do computer and engineering work at the office of the U.S. employer but are employed by the offshoring company. The many reported cases of U.S. workers being laid off and replaced by H-1B workers have all been facilitated by this arrangement.<sup>6</sup> In multiple incidents, the H-1B workers have been hired with annual wages around \$40,000 less than the workers they have replaced. Before they are laid off, the U.S. workers are often forced to train their own H-1B replacements as a condition of their severance packages; this is euphemistically known as “knowledge transfer.” Major, profitable U.S. employers like Disney and Toys “R” Us—as well as public employers and institutions like the University of California and Southern California Edison—have laid off thousands of U.S. workers who were forced to train their own replacements. Eventually, many of these replacements and their jobs were moved offshore.<sup>7</sup>

**Simple reforms can fix the H-1B program and have been proposed in Congress**

- Require employers to recruit U.S. workers and offer jobs to any equally or better qualified U.S. workers before hiring H-1B workers.
- Require employers who cannot find qualified U.S. workers to pay the H-1B workers they hire no less than the local average wage for the job (i.e., eliminate H-1B prevailing wage Levels 1 and 2).
- Provide the Labor Department with additional legal authority to crack down on abuses and exploitation of U.S. and H-1B workers, and to conduct random audits of H-1B employers.
- Appropriate more funding to the Labor Department to hire additional agents in the Wage and Hour Division and better scrutinize H-1B applications.
- Provide H-1B workers with additional protections against employer retaliation and workplace abuse.
- Ban employers from hiring additional H-1B workers if they have violated any wage and hour, labor, or immigration laws.
- Reform the H-1B lottery to prioritize higher-paying employers and non-H-1B-dependent employers.<sup>8</sup>

## Quick facts on the H-1B program

- **An estimated 460,000 H-1B workers are employed in the United States.**<sup>9</sup>
- **85,000+ new H-1B visas can be issued per year**—65,000 plus 20,000 for workers who earned an advanced degree from a U.S. university plus an unlimited number for employers such as universities and nonprofit research organizations.
- **In 2015 there were 113,000 new H-1B workers and 162,000 H-1B workers extended their visas.**<sup>10</sup>
- **H-1B visas are valid for up to six years** (for two three-year terms).
- **Over half of H-1B visa holders work in IT or other computer occupations.**<sup>11</sup>
- **H-1Bs also work in engineering, in medicine and health, and at universities.**<sup>12</sup>
- **H-1B workers can be up to 40 percent cheaper to employ than Americans.**<sup>13</sup>

## Endnotes

1. Many of these jobs are sent abroad once the H-1B workers are trained. Ron Hira, “**Top 10 H-1B Employers Are All IT Offshore Outsourcing Firms, Costing U.S. Workers Tens of Thousands of Jobs,**” *Working Economics Blog* (Economic Policy Institute), August 22, 2016; Ron Hira, “**Top 10 Users of H-1B Guest Worker Program Are All Offshore Outsourcing Firms,**” *Working Economics Blog* (Economic Policy Institute), February 14, 2013.
2. Information about H-1B-dependent employers and the applicable exemptions for H-1B nonimmigrants can be found at the Department of Labor’s website. See “**Fact Sheet #62C: Who is an H-1B-dependent employer?**” and “**Fact Sheet #62Q: What are ‘exempt’ H-1B nonimmigrants?**” Data on median wages of computer workers comes from the Bureau of Labor Statistics (U.S. Department of Labor), *Occupational Employment and Wages, May 2016* [online database].
3. Foreign Labor Certification Data Center, *Online Wage Library*, “**All Industries Database for July 2016–June 2017.**”
4. Ron Hira, “**The Impact of High-Skilled Immigration on U.S. Workers,**” Testimony before the U.S. Senate Subcommittee on Immigration and the National Interest, Judiciary Committee, Dirksen Senate Office Building, February 25, 2016.
5. See, for example, “**Techsploitation,**” *Reveal News*, The Center for Investigative Reporting, and Farah Stockman, “**Teacher Trafficking: The Strange Saga of Filipino Workers, American Schools, and H-1B Visas,**” *Boston Globe*, June 12, 2013.

6. See, for example, the recent *60 Minutes* segment “Are U.S. Jobs Vulnerable to Workers with H-1B Visas?” (CBS News, March 19, 2017).
7. Julia Preston, “Pink Slips at Disney. But First, Training Foreign Replacements,” *New York Times*, June 3, 2015; Julia Preston, “Toys ‘R’ Us Brings Temporary Foreign Workers to U.S. to Move Jobs Overseas,” *New York Times*, September 29, 2015; Michael Hiltzik, “How the University of California Exploited a Visa Loophole to Move Tech Jobs to India,” *Los Angeles Times*, January 6, 2017; Patrick Thibodeau, “Southern California Edison IT Workers ‘Beyond Furious’ over H-1B Replacements,” *Computerworld*, February 5, 2015.
8. Most of these reforms have been proposed in bipartisan legislation sponsored by Senators Durbin and Grassley, which in previous sessions of Congress was also sponsored or co-sponsored by Senators Bernie Sanders and Sherrod Brown and former Senator Jeff Sessions. See, for example, “S.2266 – H-1B and L-1 Visa Reform Act of 2015,” Congress.gov.
9. Daniel Costa and Jennifer Rosenbaum, *Temporary Foreign Workers by the Numbers*, Economic Policy Institute report, March 7, 2017.
10. U.S. Citizenship and Immigration Services (Department of Homeland Security), *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2015 Annual Report to Congress*, March 17, 2016.
11. U.S. Citizenship and Immigration Services (Department of Homeland Security), *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2015 Annual Report to Congress*, March 17, 2016.
12. U.S. Citizenship and Immigration Services (Department of Homeland Security), *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2015 Annual Report to Congress*, March 17, 2016.
13. Ron Hira, “Top 10 H-1B Employers Are All IT Offshore Outsourcing Firms, Costing U.S. Workers Tens of Thousands of Jobs,” *Working Economics Blog* (Economic Policy Institute), August 22, 2016; Ron Hira, “New Data Show How Firms Like Infosys and Tata Abuse the H-1B Program,” *Working Economics Blog* (Economic Policy Institute), February 19, 2015.

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