

ACTUAL WAGE CALCULATION AND CERTIFICATION THE UNIVERSITY OF TENNESSEE (KNOXVILLE AREA)

Purpose of This Form (To Be Read by Department Head Before Signing This Form)

The U.S. Department of Labor (DOL) requires that H-1B employees be paid at least the “Prevailing Wage” or the “Actual Wage”, whichever is higher. While the Prevailing Wage is determined by DOL, the Actual Wage is the salary paid by the employer to other **comparable employees**. This form will identify which other employees are comparable and what the wage range is for those employees. If the H-1B employee’s salary will fall below the **Actual Wage Range**, **this form may not be signed** and an H-1B petition may not be filed. DOL law also requires that H-1B employee be eligible for the same employee benefits as the comparable employees.

How is the Actual Wage Calculated?

DOL has stated that an employer must develop a system for calculating the Actual Wage, and this system must be applied consistently.

At The University of Tennessee, the Actual Wage Range is calculated as follows:

1. First, identify the *organizational unit* where the H-1B employee will be employed, and complete Section 1.
2. Identify all others currently employed with the same **UT Job Title** (as listed in IRIS), in the same organizational unit (regardless of account number).
3. Select those employees, **IF ANY**, with the same job title who have significantly different backgrounds, relevant skills, job responsibilities or requirements. **(See legitimate criteria below)**. These employees are NOT comparable. List in Section 2, with explanations.
4. List all other employees (with same job title) in Section 3. These are the **Comparable Employees**. Their salaries represent the **Actual Wage Range**.
5. In Section 4, state the **Actual Wage Range**, using the **lowest** and **highest** monthly salaries from Section 3.
(If there is only one comparable employee, list the same salary in both spaces.)
6. If the H-1B Employee’s salary will fall within (or above) the Actual Wage Range, sign the form in Section 4.
This also certifies that the H-1B employee will be eligible to receive all of the same employee benefits as the comparable employees.
7. Form is signed by Department Head and Dean and sent to CIE with the H-1B request Package

IMPORTANT: If the H-1B employee’s salary is below the Actual Wage Range, the form may not be signed. Contact CIE to discuss.

What Criteria may Be Used to Eliminate Employees from Comparable Group?

Valid Criteria:

- ✓ Employees have significantly different amounts of relevant work experience beyond highest degree (2 or more years difference)
(This includes experience both with UT and with other employers)
- ✓ Employees do not have the same degrees (e.g. One has Ph.D. and other does not; or one has two Ph.D.’s)
- ✓ Employees’ degrees or backgrounds are in **significantly** different areas (e.g. Economics and Physics)
- ✓ One employee has supervisory duties while other does not
- ✓ One position requires **specific and unusual** skills while other does not
- ✓ One employee is part-time
- ✓ One employee works in different location (outside Knoxville/Oak Ridge/East Tennessee area)
- ✓ Other factors related to job duties or employees’ backgrounds (Contact CIE to discuss.)

Examples of NOT Valid Criteria:

- ✓ Research areas are slightly different (but in same general academic field)
- ✓ Employees are paid from different grants
- ✓ Different supervisors offered different salaries
- ✓ One employee demanded/negotiated a higher salary
- ✓ Employees hired by UT at different times
- ✓ One employee works at Oak Ridge location while the other works in Knoxville

What If There Are No Comparable Employees?

It is expected that there will be comparable employee(s) in most cases. If the H-1B employee will be the only employee in that organizational unit with that job title, then there are no comparable employees. Check the appropriate statement in Section 4 and sign the form. If the department head feels that all other employees with that job title are not comparable, he/she should write a detailed memo explaining this decision. Include a detailed explanation for each employee eliminated from comparison, justifying any salary difference based on legitimate criteria. **This situation should be very rare. Call CIE to discuss before submitting form.**

Section 1: Information About Employee and Proposed Position (Use additional copies of this page if necessary)

Name of Prospective H-1B Employee: _____ Organizational Unit _____ Personnel Number if any: _____

Position Number: _____ Position Title: _____ UT Job Title: _____ Pay Grade _____

Monthly Salary: _____ Regular, Temporary, or Student position? _____ Full Time? (Yes/No) _____

Brief Job Description: _____

Section 2: Employees Who Are NOT Comparable

This chart should clearly show how the person listed is not comparable to the H-1B employee.

Personnel Number	Pay Grade	Highest Degree	Degree in (Field)	Years of related work experience beyond highest degree <i>(both at UT and not at UT)</i>	List any <u>Unusual</u> Background or Qualifications	Supervision of Non-Students? (Yes/No) (How many?)	Unusual Skills required in ad? (What?)	Other significant difference(s)	Monthly Salary
Information for Prospective H-1B Employee (This line MUST be Completed)									
H-1B Employee Listed above									
Employees with Same Job Title who are NOT comparable									

Section 3: Employees Who ARE Comparable (Do Not include H-1B Employee or Employees listed in Section 2)

Organizational Unit:		UT Job Title (as entered in IRIS):			
Personnel Number	Monthly salary	Personnel Number	Monthly salary	Personnel Number	Monthly Salary

Employee Name: _____

Section 4: Statement of Actual Wage Range

Check one:

- Based on the salaries of comparable employees in Section 3 above, the Actual Wage Range is:
_____ To _____
- I certify that there are no comparable employees in this department/organizational unit. In this case, the proposed monthly salary of _____ for the H-1B employee will be considered the Actual Wage.
- I certify, therefore, that the proposed salary of _____ per month for the H-1B employee falls within or above the Actual Wage Range and is a normal salary for this type of position at UT.
 - I also certify that the H-1B employee will be eligible for the same employee benefits as the comparable employees.
 - I understand that this calculation is subject to review by the U.S. Department of Labor at any time for the next four years (or more)*. If DOL determines that invalid reasons have been used to eliminate employees from comparison, and if this changes the Actual Wage Range, I understand that the H-1B employee's salary may have to be increased *retroactively* to meet the Actual Wage.

Signature of Department Head/Director of Organizational Unit

Name of Department Head/Director of Organizational Unit

Date

Signature of Dean or Representative

Name

Date

*DOL regulations require that documentation be kept, and available for inspection for one year beyond the ending date of the LCA validity, or three years beyond the creation of the form whichever is longer.