

## **SAMPLE ACTUAL WAGE MEMORANDUM**

This memo is used to establish the Actual Wage paid U.S. workers in the same position as H-1B employees. If the company has an established wage scale with amounts and criteria it may be used and there is no need to prepare a memo similar to this one. Otherwise, this memo must be prepared prior to filing of the LCA. It should provide a third party with sufficient information about your wage structure to estimate the wage you would normally pay an H-1B employee comparably qualified to the U.S. worker. The sample language below can be used, but bear in mind the following considerations:

**CALCULATION OF ACTUAL WAGE:** The confidential personnel file for the H-1B employee should contain a worksheet calculating the wage indicating the basis for applying the upper or lower end of the range for each variable, and a statement of the relevant qualifications considered. It would also be helpful to have on hand the profiles of wages and relevant qualifications of several U.S. workers paid a similar amount to the H-1B employee.

**REVIEWS/PROMOTIONS:** *When wages are reviewed periodically, the personnel file should be updated with a copy of a written evaluation and calculations to show the H-1B employee was given the same adjustment given to U.S. workers with similar evaluations.* However, if the actual wage you would normally pay the H-1B employee is below the prevailing wage, you must pay the H-1B employee the higher prevailing wage, and you are not required to adjust the H-1B employee's wage.

**UNACCEPTABLE FACTORS:** Sex, race, age, national origin, religion, willingness of the H-1B employee to work for less, H-1B employee parity with peers in their country of origin (unless it is at least at the U.S. prevailing wage level), or abilities/qualifications that are irrelevant to the position.

**OVERQUALIFIED WORKERS:** In setting the wage, the employer is not required to make adjustments for skills which are beyond the minimum qualifications needed to perform the job duties. However, you must be consistent. If you make adjustments for non-H-1B employees who are overqualified for the position, then you must make adjustments for H-1B employees who have similar qualifications.

### **Sample Language:**

ABC Corporation bases wages on the experience, qualifications, job responsibilities and functions of each employee. Wages may also be affected by specialized knowledge a specific worker will be able to contribute to her assignments. Wages are reviewed annually with an increase ranging from \$ \_\_\_\_ to \$ \_\_\_\_ or of approximately Y percent depending on performance and business conditions (or other factors you may specify).

ABC Corporation maintains a wage policy which dictates an entry-level wage for a Mechanical Engineer in the range of \$80,000 to \$88,000 per year.

Currently the company employs one US worker Mechanical Engineer at an entry level. This person's wage, \$80,000 is the actual wage for the job. The wage offered to the H-1B employee, \$83,000 per year reflects the H-1B worker's skills with quality control and CNC programming.

**OR**

The company typically pays an additional \$2000 per year for experience in the position or a similar position at a prior employer. This amount will be adjusted upward or downward approximately \$750 depending on performance. If using this approach be sure it is applied consistently by using a grid similar to that below.

**OR**

Currently the company employs 4 US worker Mechanical Engineers at an entry level. Their names, current wages, education, experience and skill profiles are in the confidential memo which is not part of our public access file but will be available for DOL inspection.

Whenever	Employee	Wage as of 3- 1-08	Education	Prior Exp	Hire Date	Start Wage
	Joe Smith	84000	PhD Engineering	1 Yr	3/3/2002	82000
	Fran Jones	81000	BS Eng.	6m	4/5/2003	80000
	Sam Kurtz	86000	MS Eng.	1 yr	6/5/2001	82000
	Molly Ewing	80000	BS Eng.	3 m	2/3/2004	80000

adjustments are made in wages of workers similarly employed, such as cost of living increases, merit increases, other periodic adjustments, or calculation of a higher entry rate for the occupation, ABC Corporation will adjust the wage of the H-1B worker accordingly. Notations of the occurrence of these adjustments, and of any future promotions, will be reflected in an attachment to this memo. Calculations of the amount will be placed in the employee's confidential personnel file and not in this public access file.

**Sample notation of wage adjustment for Public Access File:**

Effective March 1, 2008, ABC Corporation Entry Level Mechanical Engineers were given a wage adjustment of \$1500 per annum. Alternative approach: Effective March 1, 2008, ABC Corporation Entry Level Mechanical Engineers were given a wage adjustment of \$1000 with good performance in the prior year, \$1500 with excellent performance level and \$2000 with outstanding performance rating.