



## **H-1B Employees Working Remotely**

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There are many COVID-19 challenges facing employers in the current environment, including how to properly handle H-1B employees working from home or another remote work location. There are special notice and posting obligations associated with H-1B sponsorship, and an employer must comply with these obligations when the employee's work location changes and/or expands.

When an H-1B employee's remote work location falls within a normal commuting distance from their primary work location, a new Labor Condition Application (LCA) and amended H-1B petition are not generally required. However, the employee should post a copy of the original, signed certified LCA at the remote work location (i.e. home address) for 10 calendar days. In order to demonstrate the posting was conducted, the employee can take a photograph of the posted LCA on the first day of the posting period and email it to the employer. The employee should also include a signed statement confirming the posting for the required 10-day period and the address of the remote work location. The photo and statement can be added to the employer's H-1B Public Inspection File where evidence of the initial posting information is generally kept. Recent guidance from the Department of Labor states the posting should happen as soon as practical and within 30 calendar days after the employee begins work at the remote work location.

When the employee's remote work location is outside the metropolitan statistical area ("MSA") of the employee's primary work location, employers can take advantage of a short-term placement option. The short term employment rule permits an H-1B employee to work at a location in an MSA not listed on the LCA for up to 30 work days within a one-year period. Additionally, there may be options available for a limited 60-day placement at the remote work location. If the remote work continues beyond the applicable time period, a new LCA and amended H-1B petition will likely be required.

In this ever changing environment, employers must remain aware of the latest developments and guidance from the Department of Labor and Department of Homeland Security related to immigration processing. For additional information, please contact the Burr Immigration Team: Melissa Azallion ([MAzallion@burr.com](mailto:MAzallion@burr.com)), Anna Scully ([Ascully@burr.com](mailto:Ascully@burr.com)), or Jon Eggert ([Jeggert@burr.com](mailto:Jeggert@burr.com)).

Please visit the [Burr & Forman Coronavirus Resource Center](#) for additional information.

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