



## MATERIAL CHANGES IN EMPLOYMENT AND AMENDMENTS FOR H-1B EMPLOYEES



### What is a material change?

- ⇨ A change is material when it directly impacts the Beneficiary's position.
- ⇨ The regulations do not cite specific examples, so this determination is made on a case-by-case basis.
- ⇨ Changes to work site location, job duties, and salary could signify a material change.



### When must a company file an amended or new petition?

- ⇨ Change in work location to a new Metropolitan Statistical area (MSA).
  - MSA is defined by the DOL as the area within normal commuting distances of the place of employment where the H-1B is employed.
  - **Example:** An H-1B employee was working out of the San Francisco office, now they moved and are working from a San Diego office location, an amendment must be filed **BEFORE** they move.
- ⇨ Change in job duties – where there is more than 50% of position difference in job duties.
  - **Example:** Individual's job title is Software Engineer, as the individual progresses, his employer decides to promote him to Manager of Software Engineers, with more management duties and less hands-on software engineering. This would likely trigger an amendment.
- ⇨ Change in salary and/or hours — A reduction of salary usually triggers an amendment. Additionally, if the number of hours worked changes, this will also trigger an amendment.
  - **Example:** An employer reduces their hours from 40 hours a week to 20 hours a week, an amendment would be needed.

## When does a company not have to file an amended petition?



⇒ An employee works within an “area of intended employment.” This means that they will remain working within the same MSA (see explanation of MSA above).

⇒ Short term placements: An H-1B employee may work at a new worksite for up to 30 days in a 12-month period and in some cases 60 days in a 12-month period (where the employee is based at the “home worksite”) and does not need to file a new Labor Condition Application (LCA). Home worksite is where the H-1B employee primarily physically performs their work.

- **Example:** A company employing an H-1B employee who is a sales engineer, that sales engineer is working at the company headquarters and must travel various client sites for a few days throughout the year. In this situation, an amendment is not required as long as travel is less than 30/60 days in a 12-month period.

⇒ Non worksite locations: This is when an H-1B employee is only going to the non-worksite location and no material changes have occurred.

### ***What is a non-worksite location?***

- The employee is going to participate ONLY in employee developmental activity like staff seminars.
- They will spend little time at any one location OR
- The job is primarily at one location, but they occasionally travel for short periods to other locations on a “casual, short-term basis, which can be recurring but not excessive.”
- An H-1B employee cannot work for 5 consecutive workdays for any one visit or 10 consecutive days for any one visit by a worker who spends most work time at one location and travels occasionally to other locations.

If an employer does not file an amendment when a material change occurs the H-1B employee will not be considered maintaining status. Additionally, the employer may be liable and subject to adverse actions such as paying penalties and fines.

## What happens if the employer’s amended H-1B is denied?



Filing an amendment does not nullify the original petition. If the amendment H-1B is denied, but the original H-1B petition is still valid, the H-1B employee MAY return to working under the conditions of the original petition, assuming it has not expired.

**\*Please contact your MH attorney if you are changing an H-1B employee’s worksite, position, salary, or hours.\***