

How to Determine an H-1B/E-3 Employee's Salary and the Actual Wage

The U.S. Department of Labor (DOL) requires employers to pay H-1B and E-3 workers the higher of the **prevailing wage** or the **actual wage**.

- **Prevailing wage:** The rate paid in a specific geographic area in the same occupation. For a position governed by a collective bargaining agreement that includes a salary schedule or minimum salary requirements, the prevailing wage is the lowest possible salary for the given rank. For non-union positions, FSIS will obtain prevailing wage determinations from the DOL.
- **Actual wage:** The range of salaries University of Hawai'i (UH) is currently paying to all other employees at the worksite who are similarly employed and who have similar qualifications. Each UH hiring unit is required to calculate the actual wage and provide documentation showing how it was calculated. **An H-1B/E-3 worker cannot be paid less than the bottom of the salary range of other similarly qualified workers performing similar duties.**

To sponsor H-1B and E-3 workers, the DOL requires employers to use an objective compensation system to determine their salaries. UH units may consider only the following objective factors to determine an H-1B or E-3 worker's salary and the actual wage:

- Experience (length, relevance, and type);
- Education (level and quality of degree);
- Level of responsibility and duties;
- Specialized knowledge;
- Number and quality of publications; and
- Other legitimate business factors (e.g. awards, professional distinctions, meritorious performance, etc.).

Departments may **not** use the following factors to determine salary and the actual wage:

- Funding sources and limits;
- Differences in narrow research areas within the same department;
- Salary negotiations at time of hire;
- Past or present salary freezes;
- Market conditions; and
- Years of service at UH/seniority.

Note: If the salary of any similarly employed worker changes during the H-1B/E-3 worker's period of employment, an increase may need to be made to the H-1B/E-3 worker's salary as well.

Unique employment: If the H-1B/E-3 employee is the only person in the department with the specific job title, duties, level of responsibility, and qualifications, the hiring unit should inquire with any other departments doing similar research as to whether there are individuals who are similarly employed and similarly qualified. If there are no other employees, the H-1B/E-3 worker's salary is the actual wage.

Actual Wage Calculation Form

This document may be released to the U.S. Department of Labor upon request.

H-1B/E-3 worker: _____ UH job title: _____

Coll/sch/unit & dept: _____ Annual salary: \$ _____

How to complete this form:

1. List all employees in the department with the same UH position title as the H-1B/E-3 worker. Provide their FTE and annual salaries.
2. Check "Yes" or "No" for each employee to indicate who is or is not comparable to the H-1B/E-3 worker.
 - **Yes** means the employee and the H-1B/E-3 have similar duties, qualifications, levels of responsibility, etc.
 - **No** means the employee and the H-1B/E-3 are not similarly qualified or do not have similar duties. Explain why they are not similar to justify why one earns a higher salary. Ex: "Jane Doe earned her PhD in 2001 and has over 12 years of postdoctoral experience. [H-1B/E-3] received his PhD in 2010 and has only 4 years of postdoc experience."
3. Attach additional sheets if there are more than 5 workers in the department with the same UH title as the H-1B/E-3.
4. **Remember:** The H-1B/E-3 worker cannot be paid less than the lowest paid employee for whom you check "Yes" below. It may be necessary to raise the H-1B/E-3 worker's salary.

Name: _____ FTE: _____ Salary: \$ _____ per year

Does this person have qualifications and duties that are similar to the H-1B/E-3 worker's? Yes No (explain below)

Name: _____ FTE: _____ Salary: \$ _____ per year

Does this person have qualifications and duties that are similar to the H-1B/E-3 worker's? Yes No (explain below)

Name: _____ FTE: _____ Salary: \$ _____ per year

Does this person have qualifications and duties that are similar to the H-1B/E-3 worker's? Yes No (explain below)

Name: _____ FTE: _____ Salary: \$ _____ per year

Does this person have qualifications and duties that are similar to the H-1B/E-3 worker's? Yes No (explain below)

I certify that all department employees with the same UH title as the H-1B/E-3 worker are listed. All workers for whom "No" is checked are omitted from the actual wage range due to legitimate business factors.

Department chair's signature _____ Name _____ Date _____

HR specialist/Admin officer's signature _____ Name _____ Date _____

Actual Wage Statement

As required by the U.S. Department of Labor, a name-redacted copy of this document will be available for public inspection.

H-1B/E-3 worker: _____ UH job title: _____

Coll/sch/unit & dept: _____ Annual salary: \$ _____

Salary range of employees with qualifications and duties that are similar to the H-1B/E-3 worker's:

\$ _____ per year to \$ _____ per year at 100% FTE
lowest highest

Notes:

- Include in the range only the salaries of similarly qualified employees whose duties, experience, and other qualifications are comparable to the H-1B/E-3 employee's.
- **Remember:** The H-1B/E-3 worker cannot be paid less than the lowest paid similarly qualified employee performing similar duties in the department. Therefore, it may be necessary to raise the H-1B/E-3 worker's salary.
- If the H-1B/E-3 worker will be uniquely employed or if there is only one other similarly employed worker with similar duties in the department/research area who is earning the same salary as the H-1B/E-3 worker, only enter one salary above.

Which of the following factors were considered in determining the H-1B/E-3 employee's salary? Check all that apply:

- Educational degree(s)
- Area of specialization
- Previous work experience
- Publications
- Skills/specialized knowledge
- Level of responsibility and function
- Other legitimate business factors (please explain below):

I certify that the H-1B/E-3 worker's salary is greater than or equal to the salaries of all other employees in the department or research area who have similar qualifications and duties. If there is more than one wage paid to the group of similar employees, I can explain the reason(s) for the difference in wage rates. To verify these statements, I will provide the names and payroll records of similarly employed workers to the U.S. Department of Labor upon request.

Department chair's signature Name Date

HR specialist/Admin officer's signature Name Date