

INSTRUCTIONS FOR COMPLETING THE H-1B ACTUAL WAGE COMPARISON FORM AND ACTUAL WAGE MEMORANDUM

These forms should be completed by the sponsoring department and returned to the Office of International Services

Actual Wage Comparison Form

The Department of Labor (DOL) requires that employers pay H-1B employees the **actual wage** rate. The actual wage is the wage paid to all other comparable individuals, i.e., those with “similar experience and qualifications,” employed in a specific job. The actual wage can be stated as a range of the actual salaries (from lowest to highest) paid to comparable employees. From the DOL’s viewpoint, if the H-1B employee’s educational background, experience, and job duties/responsibilities are similar to other employees in the position; the H-1B employee’s salary should fall within the range of the other comparable employees.

To document the actual wage paid to H-1B employees at UMMC, the sponsoring department must:

- Identify all employees in the department (by employee number) with the same job title as the current/prospective H-1B employee.
- Determine which of the employees are comparable to the prospective H-1B employee
- Determine the range of actual salaries for the group of comparable employees and ensure that the prospective H-1 employee’s proposed salary falls within that range.
- Provide a legitimate justification for paying any of the comparable employees more than the prospective H-1B employee will be paid.

The DOL suggests that the following factors be considered when evaluating individuals for similar experience and qualifications and justifying pay differences among comparable employees:

- Education: Is the educational background of other employees in the job in question similar to the H-1B employee’s educational background? (degree level, GPA, class rank, reputation of school, academic honors).
- Experience: Is the experience attained by other employees who are performing the same work similar to that of the H-1B employee? (Length and type of experience; breadth and depth of experience).

- Qualifications: Are the job qualifications for the specific position in question the same for the H-1B employee and all other employees in the position? (particular skills, training, licensure).
- Job responsibilities: Are the actual day-to-day job duties and responsibilities that the H-1B employee will perform substantially similar to those of other workers employed in the same position? (basic staff duties, supervisory/managerial role, exercise of discretion, decision making ability).
- Specialized knowledge: Does the H-1B employee or any of the other employees in the position possess specialized knowledge (expertise in a specialized field of research, medicine, etc.).
- Other legitimate business factors: Have professional distinctions been attained by either the H-1B employee or other employees in the position? (Publications in professional journals, recipient of an international prize or award, development of a patent).

Factors that cannot be used to justify paying the H-1B a lower salary than that paid to comparable employees include the following:

- Limited department or grant funding.
- Salary limitations set by a grant.
- H-1B employee's willingness to accept a lower salary than the salaries paid to other comparable employees.
- The supply and demand for labor in the market place , i.e., market conditions.

Steps in Completing the Actual Wage Comparison Form

Step 1: Enter your department name, the official UMC title that is assigned to or will be assigned to the H-1B employee, and the current date.

Step 2: Enter the employee number of the H-1B employee in the appropriate column. If a number has not yet been assigned, enter "pending."

Step 3: Enter the H-1B employee's proposed/current annual salary or hourly wage, years of experience, and highest level degree. The entire H-1B employee's related experience, including related experience gained abroad, should be included.

Step 4: Enter the employee number, salary/wage, years of experience and highest level degree of all other employees in your department who hold the same title as the H-1B employee.

Step 5: Using the comparison factors referenced above, (education, experience, etc.), determine which of the employees listed in Step 4 have experience and qualifications similar to the H-1B employee. Enter "Yes" in the column labeled **Comparable** for each employee who is similar; otherwise enter "no." Note: It is not essential for current UMC employees to have the exact same qualifications as the H-1B employee in order to be considered "comparable." For example, employees with experience ranging from 1-3 years may, in your opinion, be considered comparable. If it is determined that there are no comparable employees, skip to the section below labeled "Actual Wage Memorandum."

Step 6: Determine the salary range (from lowest to highest salary) for the comparable employees only, and enter that range where indicated at the top of the page. The H-1B employee's salary must at least be equal to the minimum of the salary range, but should not be included in the range of comparable employees – only current employees should be included in the range.

Step 7: Determine which of the comparable employees referenced in Step 5 is paid more than the H-1B employee. If none of the comparable employees is paid more, skip to the section below labeled "Actual Wage Memorandum." Refer to the section of the wage comparison form labeled **Factors Resulting in Higher Salary for Other Comparable Employees**. For each higher paid comparable employee, enter an "x" in the appropriate column for each factor that justifies a higher salary. Additionally, please enter a more detailed justification for the higher salary in the column labeled **Reason for Higher Salary**. Please refer to the Actual Wage Comparison example.

Actual Wage Memorandum

The actual wage memorandum summarizes the criteria used to determine the actual wage rate.

1. Enter the H-1B employee's position title and department where indicated under the heading *Determination of the Actual Wage Rate*.
2. Refer to the check boxes at the bottom of the form. After completing the *Actual Wage Comparison Form*, if it is determined that there are other employees in the department with the same title as the H-1B employee who are comparable, mark the first check box:
 - Enter the number of comparable employees in the space provided.
 - Enter the lowest and highest salaries of this group of comparable employees (**do not include the H-1B employee's salary**). Follow the instructions in Step 6 for the *Actual Wage Comparison Form* (above).
 - Enter the salary that will be paid to the H-1B employee.
3. If there are no employees in the department who are comparable to the H-1B employee, mark the second check box.