

CORPORATE REORGANIZATIONS & LCA REQUIREMENTS

This memo discusses the rules relating to H-1B/H-1B1/E-3/LCA obligations in the event of a corporate reorganization.

New LCAs for existing H-1B employees need not be filed in the event of a corporate reorganization if

1. the H-1B remains in the same location and continues to perform the same duties indicated in the existing LCA,
2. the new entity evidences its assumption of LCA obligations with a memorandum in the public access file stating each affected LCA number and date of verification, a description of the new employer's actual wage system applicable to all H-1Bs, and the EIN of new employer, even if the same, and
3. a sworn statement by an authorized representative of the new entity stating that it will assume the obligations of the LCA, maintain a copy of the statement in the public access file and make the document available to the public or the DOL upon request.

A new LCA and H-1B filing will be required, however, if the new entity does not assume the LCA obligations and liabilities of the previous entity before the newly acquired employee can commence the new employment.

Whether or not the new entity chooses to assume the obligations and liabilities of the previous entity, it will have to file new LCAs if:

1. an H-1B worker changes jobs or locations from those indicated in the previous entity's LCA,
2. new hires occur, and
3. when extensions for existing H-1B workers are filed.

Please note that LCA slots left over from the previous entity's approved blanket LCAs may not be used.

A change in H-1B dependency as a result of the reorganization will have no effect with respect to the current H-1B workers. For example, if a dependent company becomes non-dependent, it must continue to comply with the additional attestations rules unless new LCAs and H-1B petitions are filed.

Companies that become H-1B dependent would only have to apply new attestation requirements for new H-1B employees, or for extensions of H-1B status for existing employees.