

Answers to your questions about H-1B prevailing wage issues

Background

Since the passage of the Immigration and Nationality Act of 1990, all employers wishing to sponsor H-1B visas for foreign nationals have had to comply with federal regulations regarding wages for foreign nationals. The Department of Labor (DOL) Regulations implementing provisions of the Act can be found in the *Code of Federal Regulations*, Title 20, Section 655. MIT files approximately 200 H-1B applications each year and is required to comply with all applicable labor laws.

These laws were designed to protect US workers by requiring employers to attest that no US workers are displaced by the hiring of foreign nationals, that there are no strikes or lockouts, and other protections. The regulations also prevent exploitation of foreign workers by ensuring that their wages are not lower than other workers in similar positions at the same employer.

Per DOL regulations, H-1B employees must be paid whichever is higher, the actual wage or the prevailing wage. The actual wage is the amount being paid to all other MIT employees with similar experience and qualifications for that specific position at the particular department, laboratory, or center. **The prevailing wage is the rate being paid in academic institutions in a particular metropolitan statistical area for the same occupation.**

The prevailing wage determination is based on data from the Occupational Employment Statistics (OES) Survey, a national survey managed by the Bureau of Labor Statistics. New prevailing wage data are released annually. Before 2006, many of the academic occupational classifications were rather general (e.g. Engineers, Life Scientists, Physical Scientists) and the prevailing wages were relatively low.

Starting in 2006 the classifications became much more specific (e.g. Chemical Engineers, Materials Engineers, Microbiologists, Chemists, Physicists). Prevailing wage data have fluctuated considerably. In some fields they have risen significantly over the past one or two academic years, in some cases by as much as 50% (see below). These figures are based on OES data for "Level I," in the academic (ACWIA) pool. However, as you know there has been no commensurate increase in actual academic salaries. In reality, academic institutions have faced diminished research funding in many scientific disciplines.

	<u>7/06-6/07</u>	<u>7/07-6/08</u>	<u>7/08-6/09</u>
Atmospheric Scientists	\$42,910	\$44,491	\$49,150
Biological Scientists, All Other	\$34,303	\$46,675	\$47,861
Chemists	\$41,850	\$48,506	\$68,910
Materials Scientists	\$38,854	\$42,120	\$48,776
Physicists	\$39,582	\$39,499	\$62,296

Why have the prevailing wages for some occupational classifications increased so much?

The data are gathered from a sample of employers and completion of the survey is not mandatory. According to the Foreign Labor Certification Data Center website (<http://www.flcdatacenter.com/faq.aspx>), fluctuation in prevailing wages may be attributable to various factors, including: (1) the data may be calculated from a smaller or larger geographic area, depending on the size and number of employers that respond in each area; (2) the mix of high-paying to low-paying employers that are sampled and/or respond to the survey may vary; and (3) how employers completing the survey decide to classify occupations may vary.

Although this cannot be confirmed, we suspect that among other possible causes of inflated prevailing wages could be the higher salaries paid in some “affiliated” research labs and other non-profit and/or government-connected research labs, which are included in the education database.

It is our understanding that MIT’s Compensation Office participates in the survey. However, data are collected each year from different employers (an employer would only be sent the survey once in any three year period). Moreover, the survey is huge, comprehensive (including requests for statistics on all positions, from landscapers to professors), and cumbersome to complete. Although the survey covers a wide range of positions, it asks only for “title” and “salary.”

What are MIT and other academic institutions doing about it?

The International Scholars Office always seeks an accurate position classification with the most reasonable prevailing wage. When we submit a prevailing wage request, whenever possible we suggest what we believe to be the most appropriate occupational classification. However, the State Employment Security Administration, which issues the prevailing wage determinations, does not always agree with our classification selection, particularly in the case of interdisciplinary research.

MIT and its peer institutions continue to express their concerns. The International Scholars Office has been complaining about this problem for several years, to the Assistant Secretary for the Employment and Training Administration and the U.S. Secretary of Labor. NAFSA: Association of International Educators is also active in this issue.