

Unveiling the Truth About H-1B Visas: Are American Workers Being Sidelined?

By COO, Jobs Now! • Published on January 5

When we started posting about the impact of H-1B visas on American workers, we immediately started to hear a common response: “Companies have to prove they couldn’t find an American before they can sponsor an immigrant!”

It was immediately clear that many Americans did not have a clear understanding of common immigration visas. Why would they? The rules are complicated and can be opaque, and there’s not much reason to learn them unless you are an immigration lawyer or an immigrant applying for one.

The truth is that companies are NOT required to try to hire an American before seeking an H-1B visa for an immigrant to fill a job - the department of labor clearly states this in factsheet 620 on their website. There are exceptions for employers with very high ratios of visa holders to citizens, but most companies do not face this burden and can go straight to hiring an immigrant.

So why does this misunderstanding persist, with so many people repeating it? The answer lies in the PERM process, where employers can apply to bring a worker to the US permanently, instead of the temporary 5-year term of an H-1B visa. To obtain this permanent status for a worker (the first step toward being awarded a green card allowing indefinite residence in the US), employers DO have to perform a “US-labor market test” in which the company advertises the job they desire to fill publicly for at least 30 days.

The rules of the labor market test are *intended* to provide protection so that US workers have every opportunity to apply for a job before an immigrant worker is offered permanent status to fill an open role. But the reality is that immigration law firms have optimized the process to minimize chances that the immigration process will be slowed down by interviewing American citizens for jobs.

Jobs for which companies plan to sponsor an immigrant will meet the minimum requirements by:

- Posting jobs for the minimum 30 day period,
- Only in print classified sections of newspapers, and
- Devising convoluted application processes
- Requiring mailed-in, paper applications instead of the typical online form application.

Abuses like these have been documented by companies as large as Apple, which settled with the Justice Department for \$25M in 2023 for devising a PERM market test process which illegally discriminated against US citizens.

Despite landmark fines, companies persist in setting up adversarial PERM market tests that hide job postings from US citizens to speed up immigration applications. The Jobs.Now team has reviewed job postings from dozens of top companies like Meta, Block, Doordash, and Netflix which require unusual application processes like emailing or paper-mailing the application to specialized addresses, or using unbranded separate websites for collecting applications for jobs. The reason for being for Jobs.Now is to cut through the complicated processes companies put between US citizens and open jobs, and make sure every American gets the first chance at opportunities in their own country.

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