



Project Firewall Explained

By Mary Pivec, Of Counsel

Q: What is the U.S. Department of Labor's "Project Firewall" initiative, and why is it significant for employers in the H-1B program?

A: Project Firewall is a new initiative launched by the Department of Labor (DOL) aimed at protecting the jobs, wages, and working conditions of America's highly skilled workforce. It specifically targets the prevention of employers displacing American workers in favor of lower-cost foreign labor. This initiative signals an increased focus on compliance within the H-1B program and is likely to result in a rise in DOL LCA (Labor Condition Application) compliance investigations. This means employers need to be even more vigilant about their H-1B practices.

Q: How might Project Firewall specifically impact employers, particularly those who have received complaints from U.S. tech workers?**

A: This initiative directly relates to the recent emails clients have been receiving from disgruntled U.S. tech workers. These workers are complaining about not being considered for jobs referenced in months-old LCA filings. Project Firewall will intensify the scrutiny of these types of complaints, potentially leading to more audits and enforcement actions against employers.

Q: Are there any external factors or organizations contributing to these challenges for H-1B employers under Project Firewall?

A: Yes, there are. If you visit the website linked at the bottom of some of these complaint emails (https://guestworkervisas.com/gwv/jobs_direct.php), you'll find a job board created by an organization that appears to be specifically targeting and disrupting the H-1B program, aiming to cause difficulties for employers. The identity of the persons or organizations behind this website is currently unknown, but the H-1B program has been highly criticized by WH Deputy Chief of Staff, Stephen Miller, and Mark Krikorian, the executive director of the Center for Immigration Studies, for taking jobs away from U.S. workers.

Q: To initiate an LCA compliance investigation, doesn't the Labor Department need to have received a complaint by or on behalf of an individual claiming an injury as a result of an employer violation of the LCA attestation requirements?

A: In the past, that was the case. However, under Project Firewall, the Secretary of Labor has announced the intent to personally certify investigations into employers suspected of violating H-1B/LCA attestations based on tips received from third parties other than an



aggrieved individual. The applicable regulation anticipates that the alleged violation would be reported to the Wage and Hour Administrator, who would then refer it to the Secretary for review and possible certification. Over the past 30 years, the Secretary has never exercised this authority.

Q: What categories of employers could be at risk of investigation under Project Firewall?

A: Certainly, the Indian Business Software Technology consulting companies are at risk, as well as American companies listed among the top users of the H-1B visa program. But experience teaches that smaller companies can also be targeted for investigation. Any company that sponsors H-1B workers could find themselves the target of an investigation. The risk is elevated in the event of a layoff or displacement of U.S. workers in occupations later filled by H-1B workers.

Q: How can employers best prepare for a possible investigation?

A: They should hire experienced counsel to audit their Public Access Files for compliance with the LCA attestation provisions, most importantly the notice and wage payment obligations.

Q: What if the Wage and Hour Division determines that an employer has violated the attestation provisions - how significant are the penalties?**

A: The current penalty schedule for LCA violations includes the following amounts and categories:

- **\$1,811** maximum fine and one-year prohibition from filing immigrant and nonimmigrant visa petitions could be assessed for:
 - a failure to meet strike or layoff attestation;
 - a substantial failure to meet working-condition attestation or displacement attestation, posting or recruitment attestations; or
 - a misrepresentation of material fact in a Labor Condition Application.
- **\$7,370** maximum fine and two-year prohibition from filing immigrant and nonimmigrant visa petitions for:
 - a willful failure to meet any attestation, or willful misrepresentation of material fact in the Labor Condition Application;
 - a willful failure to meet an attestation condition resulting in the displacement of a US worker, or willful misrepresentation of a material fact.
- **\$51,588** maximum fine and three-year prohibition for:



- a willful failure to meet an attestation condition, or willful misrepresentation of a material fact on a Labor Condition Application, in the course of which failure or misrepresentation, a U.S. worker is displaced during the 90 days before filing the application through the 90 days after filing the petition.

Q: What investigative resources will the Labor Secretary have in executing on Project Firewall other than the Wage and Hour Division?

A: The Department of Justice (DOJ) is expected to play a role in this enforcement campaign, as it will share enforcement data with the DOJ, the Equal Employment Opportunity Commission, and U.S. Citizenship and Immigration Services. This collaboration is part of the broader "America-First" framework for foreign worker programs, which seeks to favor U.S. workers for high-skilled roles and crack down on employers that rely on H-1B labor in ways that appear to replace or underpay local hire.

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