

Comparison of L-1 Legislation Introduced in 2005

	109th Bill HR 3322	109th Bill HR 3381	Current Law
Sponsor	◆Johnson	◆DeLauro	
Cosponsors	◆ Simmons, Shaw, Price and Bradley	◆ McGovern, Lantos, Schakowsky, Woolsey, DeFazio, Rohrabacher, Pastor, Sanders, Larson, Moore	
Title	◆USA Jobs Protection Act of 2005	◆L-1 Nonimmigrant Reform Act	
Summary	◆Adds new requirements to L-1 and H-1B visas.	◆Adds new requirements to L-1 and H-1B visas. ◆Amends definition of L-1B "specialized knowledge" to require bachelor degree. Foreign degree equivalency and authenticity must be certified by DOS.	
DOL Attestations	◆Requires all H-1B employers to meet attestation requirements with respect to displacement and recruitment of US workers (USWs), that are currently only mandated of H-1B dependent employers.	◆Adds virtually all H-1B attestations to the L program. LCA must specify occupational classification, wage rate and working conditions. These do not currently apply to H-1B LCA.	◆All H-1B employers must file attestation (LCA) with DOL that they are meeting certain wage and other requirements with respect to H-1B workers. Petitioner is required to obtain a certification from the DOL it has filed an LCA in the occupation specialty. Additional attestations apply to dependent employers and willful violators. No attestations for L visas. LCAs are public documents available on DOL website.
Wages and Working Conditions Attestation	◆Employer must offer L worker higher of the prevailing or actual wage for the job offered. Provisions make no distinction between L-1A and L-1B in this regard.	◆Employer must offer L worker higher of prevailing, median average or median OES wage. Must offer same working conditions as USW.	◆Employer must offer H-1B worker 100% of prevailing or actual wage, whichever is greater. Must provide working conditions for H-1Bs that will not adversely affect other workers similarly employed.
No Strike or Lockout Attestation		◆Must attest that L worker not used to break strike.	◆Must attest that H-1B worker not used to break strike.
Notice Attestation	Must provide notice of hiring of L worker to US workforce. Employer to make available by public examination.	◆Must provide notice of hiring of L worker to US workforce. Employer to make available by public examination.	◆Must provide notice of hiring of H-1B worker to US workforce.
No Layoff or Displacement Attestation	◆All L-1 employers must attest to no-layoff of USWs within the period beginning 180 days before or ending 180 days after the filing of L-1 petition.	◆All L-1 employers must attest to no-layoff of USWs within a period beginning 180 days before or ending 180 days after filing. More expansive definition of layoff than current H-1B law.	◆Currently, only H-1B dependent employers and those who have been found to be willful violators of the H-1B program must provide attestations stating that USWs have not been displaced and that the recruitment of USWs has been attempted. Current requirement calls for such H-1B employers to attest to no layoff of USWs within a period beginning 90 days before or ending 90 days after filing placement.

Comparison of L-1 Legislation Introduced in 2005

	109th Bill HR 3322	109th Bill HR 3381	Current Law
Placement of L Workers at Third-Party Sites or Outsourcing	◆Addressed in L-1 Visa Reform Act of 2004.	◆Addressed in L-1 Visa Reform Act of 2004.	◆The L-1 Visa Reform Act of 2004 made changes to the law where employers place workers at third party sites. In such cases, employers must demonstrate that they will continue to exercise control over those employees and that any labor for hire contract with a third party is only in connection with the alien's specialized knowledge of the petitioner's products or services. ◆H-1B law prohibits dependent employers from placing workers at third-party site if there is an "indicia of employment" unless third party attests that there has been no layoff.
Recruitment Attestation	◆Requires employers petitioning for L-1B specialized knowledge workers to file an application with the DOL attesting that the employer made a good faith attempt to recruit USWs using industry-wide standards.		◆The H-1B Visa Reform Act of 2004 restored laws requiring H-1B dependent employers and willful violators to attest to efforts to recruit USWs using standards common to the industry.
Annual Quota		◆35,000 annual L cap applies only to principal foreign nationals. Exempts higher ed and research organizations (few use this visa anyway).	◆Cap on H-1B of 195,000 reverted to 65,000 on 10/1/03. No cap on L visas.
Blanket Program	◆DOL/DHS must consult annually to ensure that procedures utilized to process blanket petitions shall not interfere with efforts by DOL to enforce provisions.	◆Eliminates Blanket L visa program.	◆Companies meeting certain criteria may obtain blanket pre-certification to sponsor L workers. Makes program more timely and efficient. No similar program exists for H-1Bs.
Period of Admission	◆L-1A limited to 5 years, L-1B limited to 3 years.	◆3 years for all H-1Bs. 3 years for all L visas.	◆H-1B is 6 years. ◆L-1A is 7 years. ◆L-1B is 5 years.
Pre-employment	◆Must have worked for entity abroad for 2 of the last 3 years.	◆Must have been employed continuously on a full-time basis by the entity abroad for 2 straight years during the last 3 years.	◆1 of last 3 years for both L-1 and L blanket. The L-1 Visa Reform Act 2004 increased initial L blanket pre-employment from 6 months to 1 year.
Fees	◆Requires DOL to impose administrative fee on employers filing L petition to cover cost of processing the LCA.	◆Extends \$1500/\$750 fee to L visa program. Creates the L Nonimmigrant Petitioner Account and redirects fees to 30% USCIS and DHS for processing and data collection and 40% DOL enforcement. Also 30% fees go to the training and education of USWs.	◆The H-1B and L-1 Visa Reform Act modified certain fees as follows: Changed the H-1B education and training fee from \$1,000 to \$1,500 and \$750 (by employer size and certain employers are exempt). Directs fees - 50% to DOL job training programs, 30% to low income scholarships, 10% to NSF for K-12 public-private partnership programs, 5% for DHS processing of nonimmigrant applications, 5% for DOL processing of LCA applications. Added new \$500 fraud fee for both H and L visas.

Comparison of L-1 Legislation Introduced in 2005

	109th Bill HR 3322	109th Bill HR 3381	Current Law
Enforcement Authorities	<ul style="list-style-type: none"> ◆Applies H-1B enforcement mechanisms to L visas. Secretary of Labor would be empowered to initiate an investigation of any employer of L-1 or H-1B workers if there is "reasonable cause" to believe that the employer is not in compliance with the law. 	<ul style="list-style-type: none"> ◆Imposes H-1B enforcement mechanisms and penalties on L visa program. Secretary of Labor empowered to initiate an investigation of if there is "reasonable cause" to believe the employer is not in compliance with the law and expands dollar amount of fines. DOL may conduct random compliance audits. ◆Permits investigation based on confidential sources. 	<ul style="list-style-type: none"> ◆H-1B law contains extensive investigative, enforcement and penalty mechanisms.
Reports	<ul style="list-style-type: none"> ◆1 year after bill's enactment the Comptroller General reports on efficacy of amendments, additional changes necessary to protect USWs and meet employer needs. 	<ul style="list-style-type: none"> ◆DHS and DOL to jointly submit annual DOL report on L violations. 	<ul style="list-style-type: none"> ◆The L-1 Visa Reform Act of 2004 requires the DHS Inspector General (IG) to report to Congress on the vulnerabilities and potential abuses of the L visa program by June 2005. The law also established an L visa Interagency Task Force (IATF) comprised of representatives from DHS, DOJ and DOS to recommend to Congress legislative changes to the L visa category. These recommendations will be based on a combination of the IATF's conclusions and on an assessment of DHS IG reports. Report due by December 2005. ◆The Attorney General must submit annual reports on the number of H-1B petitions filed, withdrawn and awaiting final action, as well as approved and denied (including the number of workers included in such petitions).
Other	<ul style="list-style-type: none"> ◆Eliminates the current 30-day processing time limit to adjudicate L-1 petitions. 	<ul style="list-style-type: none"> ◆Employer required to pay return transportation for L workers as they do for H-1Bs dismissed from employment by the employer before the end of the period of authorized admission. ◆Amended petitions are not required in a corporate restructuring, as in H-1B. 	