

GLOBAL HIRING GUIDE

United States



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Table of Contents

01 Basic Country Facts

02 Statutory Labor Requirements

- Probation Period
- Annual Leave
- Public Holidays
- Maternity Leave
- Paternity Leave
- Sick Leave
- Work Hours
- Overtime
- Notice Period
- Severance
- 13th Month

03 Income Tax

04 Social Security

05 Deductible Expenses

- Employment Expenses
- Personal Deductions
- Standard Deductions
- Business Deductions

06 Immigration

- Visitor for business—B-1
- Specialty occupations—H-1B
- Specialty occupations—
Trainees—H-3
- Intracompany transferees—L-1
- Extraordinary ability—O-1

07 Value Added Tax (VAT)

08 Withholding Tax

- Dividends
- Interest
- Royalties
- Fees for technical services

09 Termination

10 Statutory Benefits

BASIC COUNTRY FACTS

- **Full Name**
United States Of America (USA)
- **Capital**
Washington, D.C.
- **Main Languages**
English
Spanish
Chinese
French
Vietnamese
- **Population**
331.9 Million
- **Monetary Unit**
United States Dollar
- **Internet Domain**
- **International Dialing Code**
+1
- **Currency**
United States Dollar



02

STATUTORY LABOR REQUIREMENTS

In the United States, labor law, benefits, taxes, etc. vary between states. However, many employment laws in the U.S. fall under federal legislation. This hiring guide focuses on federal legislation. We recommend that you utilize an Employer of Record service to help navigate state and federal employment compliance.

Probation Period

- The probationary period for a US employee varies, and depends entirely on the arrangement that's been agreed between the employer and the employee.
- However, a 90-day probationary period is standard in the US.

Annual Leave

- There is no law that requires US employers to offer paid holiday time to their staff.
- However, in reality, most US employers offer paid holiday to their workers.
- The number of days varies from employer to employer, but on average, US workers receive around 10 days of paid holiday each year.

Public Holidays

1. New Year's Day
2. Martin Luther King Jr. Day
3. Memorial Day
4. Independence Day
5. Labor Day
6. Veterans Day
7. Thanksgiving
8. Christmas Day

Maternity Leave

- Under the Family and Medical Leave Act (FMLA), most new parents are entitled to 12 weeks of unpaid, job-protected leave to care for a newborn or a newly adopted child. But there are conditions:
 - they need to have worked for their employer for at least 12 months,
 - have worked at least 1250 hours over the past 12 months, and
 - work at a location where the company employs 50 or more employees within 75 miles.

Paternity Leave

- The rights and conditions for paternity leave in the US are the same as those conditions for maternity leave.

Sick Leave

- Currently, there are no federal legal requirements for paid sick leave.
- For companies subject to the Family and Medical Leave Act (FMLA), the Act does require unpaid sick leave.
- FMLA provides for up to 12 weeks of unpaid leave for certain medical situations for either the employee or a member of the employee's immediate family.
- In many instances paid leave may be substituted for unpaid FMLA leave.
- Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

Work Hours

- The Fair Labor Standards Act stipulates that a standard workweek consists of 40 hours.
- Work done beyond 40 hours requires overtime pay.

Overtime

- The federal overtime provisions are contained in the Fair Labor Standards Act (FLSA).
- Unless exempt, employees covered by the Act must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay.
- There is no limit in the Act on the number of hours' employees aged 16 and older may work in any workweek.
- The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime is worked on such days.

Notice Period

- The Worker Adjustment and Retraining Notification Act (WARN) protects workers, their families, and communities by requiring employers with 100 or more employees (generally not counting those who have worked less than six months in the last 12 months and those who work an average of less than 20 hours a week) to provide at least 60 calendar days' advance written notice of a plant closing and mass layoff affecting 50 or more employees at a single site of employment.
- WARN makes certain exceptions to the requirements when layoffs occur due to unforeseeable business circumstances, faltering companies, and natural disasters.
- Employees entitled to notice under WARN include managers and supervisors, as well as hourly and salaried workers. WARN requires that notice also be given to employees' representatives, the local chief elected official, and the state dislocated worker unit.

Severance

- Severance pay is often granted to employees upon termination of employment.
- It is usually based on length of employment for which an employee is eligible upon termination. There is no requirement in the Fair Labor Standards Act (FLSA) for severance pay.
- Severance pay is a matter of agreement between an employer and an employee (or the employee's representative).

13th Month

- It is not mandatory in the US.

INCOME TAX

- The United States levies tax on its citizens and residents on their worldwide income.
- US citizens and resident aliens may exclude, however, up to USD105,900 (for 2019) of their foreign-earned income plus certain housing expenses if they meet specified qualifying tests and if they file US tax returns to claim the exclusion.
- Non-resident aliens are taxed on their US-source income and income effectively connected with a US trade or business (with certain exceptions).
- A nonresident alien is subject to US tax on income that is effectively connected with a US trade or business and on US-source fixed or determinable, annual or periodic gains, profits and income (generally investment income, including dividends, royalties and rental income).
- For individuals, the top income tax rate for 2020 is 37%, except for long-term capital gains and qualified dividend

SINGLE TAXPAYERS	
Taxable Income (USD)	Tax Rate (%)
0 To 9,875	10
9,876 To 40,125	12
40,126 To 85,525	22
85,526 To 163,300	24
163,301 To 207,350	32
207,351 To 518,400	35
518,401+	37

MARRIED TAXPAYERS FILING JOINTLY

Taxable Income (USD)	Tax Rate (%)
0 To 19,750	10
19,751 To 80,250	12
80,251 To 171,050	22
171,051 To 326,600	24
326,601 To 414,700	32
414,701 To 622,050	35
622,051+	37

HEAD-OF-HOUSEHOLD TAXPAYERS

Taxable Income (USD)	Tax Rate (%)
0 To 14,100	10
14,101 To 53,700	12
53,701 To 85,500	22
85,501 To 163,300	24
163,301 To 207,350	32
207,351 To 518,400	35
518,401+	37

SINGLE TAXPAYERS

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163,301 To 207,350	32
207,351 To 311,025	35
311,026+	37

SOCIAL SECURITY

- Under the Federal Insurance Contributions Act (FICA), social security tax is imposed on wages or salaries received by individual employees to fund retirement benefits paid by the federal government.
- The following two taxes are imposed under FICA:
 - Old-age, survivors, and disability insurance (OASDI)
 - Hospital insurance (Medicare)
- The taxes generally are borne equally by the employer and the employee, with the employer responsible for remitting each employee's portion to the federal government.
- The OASDI tax is imposed on the first \$147,000 of wages, at the combined rate of 12.4%.
- The Medicare tax is imposed on total wages, at the combined rate of 2.9% (plus an additional 0.9% for wages above a certain threshold).
- The employer's portion of social security taxes is deductible for income tax purposes.
- Persons who are self-employed are subject to a separate tax that is comparable to the social security tax paid by employers.
- The US has totalization agreements in force with over 20 countries to eliminate dual social security taxation and to help ensure benefit protection for employees.

CONTRIBUTION	EMPLOYER	EMPLOYEE
OASDI	6.2%	6.2%
Medicare	1.45%	1.45%

DEDUCTIBLE EXPENSES

Employment Expenses

- For years before 2018, employees may have been able to deduct certain 'ordinary and necessary' unreimbursed work-related expenses as an itemized deduction.
- Common deductions included travel expenses and transportation costs (other than commuting to and from work), business entertainment and gifts, computers and cell phones if required for the taxpayer's job and for the convenience of the employer, uniforms, and home offices expenses, among others.
- In order to itemize such expenses, they must have been greater than 2% of adjusted gross income.

Personal Deductions

- Citizens and resident aliens can deduct the following common items:
 - Qualified residence interest
 - State and local income or sales taxes and property taxes up to an aggregate of USD 10,000
 - Medical expenses, certain casualty, disaster, and theft losses, and charitable contributions, subject to limitations
 - Child care expenses.
 - Alimony (no longer deductible starting in 2019)

- Non-resident aliens may deduct, subject to limitations, casualty and theft losses incurred in the United States, contributions to US charitable organizations, and state and local income taxes.
- No deduction is allowed for personal interest.
- However, interest paid on investment debt is deductible, but only to the extent that there is net investment income (i.e. investment income net of investment expenses other than interest).

Standard Deductions

- Instead of itemizing deductions, citizens and resident aliens may claim a standard deduction.
- The basic standard deduction for 2020 is USD 24,800 for married couples filing a joint return, USD 12,400 for individuals, and USD 18,650 for heads of household.
- For 2019 the standard deduction is USD 24,400 for married couples filing a joint return, USD 12,200 for individuals, and USD 18,350 for heads of household.
- These amounts are adjusted annually for inflation.
- Non-resident aliens may not claim a standard deduction.

- Individuals, including resident aliens, who are blind or age 65 or over are entitled to a higher standard deduction.
- For 2019 and 2020, such an individual who is married may increase the standard deduction by USD 1,300; if such an individual is single, the additional standard deduction is USD 1,650.
- If an individual is both blind and age 65 or over, the standard deduction may be increased twice.
- Beginning in 2018, taxpayers may be entitled to deduct up to 20% of their “qualified business income,” when calculating taxable income.
- This 20% deduction is calculated under a complex set of rules.
- There are many limitations to this deduction, including whether the taxpayer operates a qualified business and whether the individual's taxable income is below the overall limit of USD160,700 (USD321,400 for married filing joint return).
- In general, qualified business income does not include income from performing services as an employee

Business Deductions

- Self-employed individuals are entitled to the same deductions as employees, which after the 2017 Tax Cuts and Jobs Act are very limited.
- However, they may also deduct directly related ordinary and necessary business expenses.
- Special rules may apply to limit business deductions if a taxpayer's business activity does not result in a profit for three of five years.
- In this situation, the activity may be classified as a hobby, and the expenses are deductible only if they qualify as itemized deductions.
- Self-employed individuals may establish, and may deduct contributions paid to, their own retirement plans, subject to special limitations.

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IMMIGRATION

- Several business-related nonimmigrant visa categories are described below.

Visitor For Business—B-1

- B-1 status is issued to people temporarily visiting the United States to engage in business on behalf of foreign employers.
- B-1 holders may not be employed by or receive salary from US employers, but, among other activities, they may negotiate contracts, sell company products, develop business leads and attend conferences and business meetings on behalf of their foreign employers.
- A temporary business visitor may accept reimbursement for incidental expenses such as travel expenses.
- A B-1 visitor must retain unrelinquished domicile in the foreign country to where he or she intends to return at the conclusion of his or her temporary US stay.
- In general, business visitors with B-1 visas may enter the United States for periods of up to six months.
- However, B-1 status can be granted for a shorter period, often not exceeding 30 days, unless the business visitor can justify a longer period of admission.
- Applications for an extension beyond the initial entry period can be sought from the United States Citizenship and Immigration Service (USCIS).

Specialty Occupations—H-1B

- The H-1B category covers foreign nationals employed in specialty occupations that require a theoretical and practical application of highly specialized knowledge, as well as a bachelor's degree or the equivalent in the field.
- Before applying for an H-1B visa, an employer must file a Labor Condition Application (LCA) with the Department of Labor (DOL) and certify that, among other things, the foreign national will be paid at least the prevailing wage for the proffered position.
- On 15 March 2019, the DOL issued policy guidance regarding LCA posting requirements.
- A prospective employer must also provide notice of filing the application by posting a hard copy notice, electronic notification or, when applicable, notification to the company's bargaining representative.
- If posting by hard copy notice, the employer must post notice of filing the application in two conspicuous locations at the employment site for at least 10 consecutive business days.
- If the employer meets the requirements, the holder of the H-1B status is entitled to a maximum six-year stay in the United States.
- In specified circumstances, extensions beyond the six-year limit may be available.
- Each year, only 65,000 H-1Bs are made available.

- In addition, regulations allow a further 20,000 H-1Bs to be issued to persons having a master's or higher degree from qualifying US post-secondary institutions.
- These requirements apply to both initial and renewal petitions. Prior to issuing this policy guidance, the USCIS generally permitted petitioning employers to provide general statements regarding the dates and locations of an H-1B worker's proposed or possible employment at external client locations.
- The current policy guidance specifically overturns the prior guidance and institutes a requirement for a specific, detailed itinerary corroborated by contracts covering these employees' work.
- On 19 November 2018, a new ETA Form 9035, Labor Condition Application (LCA), was implemented by the DOL.
- The new LCA form requests that the employer discloses the following:
 - Estimated number of workers that will perform work at the intended place of employment
 - Whether the worker subject to the LCA will be placed with a secondary employer at the place of employment
 - If the worker is placed with a secondary employer, the legal business name of the secondary employer
- These revisions were made to improve transparency about the number of H-1B workers being sent to worksites, the locations at which H-1B workers will be placed and the entities with which H-1B workers will be placed.

Specialty Occupations—Trainees—H-3

- H-3 status may be issued to foreign nationals to enter the United States for up to two years to receive training and to develop skills that will be used in their careers abroad.
- Trainees must participate in structured training programs at US companies.
- The programs must incorporate theoretical and practical instruction, and may not consist solely of on-the-job training.
- The training must be unavailable in the foreign national's home country, and the skills acquired must apply to work outside the United States.
- For short-term training assignments (typically up to three months), an H-3 visa may not be required (for someone who falls under the VWP or who does not require a US visa), because in some instances the US immigration authorities recognize the "B-1 in lieu of an H-3" visa, which allows individuals to apply at a consulate (or in the case of the VWP, at the port of entry) for admission for the purpose of short-term training.
- Spouses and unmarried children of H-3 visa holders are eligible for H-4 status, but are not permitted to work in the United States.

Intracompany Transferees—L-1

- The L-1 visa allows foreign companies with affiliated operations in the United States to transfer needed personnel to their US facilities.

- L-1 visas may be issued to foreign nationals who are employed abroad in executive or managerial positions, or who hold positions involving specialized knowledge in the company's procedures, processes, services and/or products.
- On 15 November 2018, the USCIS issued a Policy Memorandum (PM) clarifying the requirement that the qualifying organization must have employed the principal L-1 beneficiary at the related foreign entity abroad for at least one continuous year during the three years preceding the time of petition filing.
- The PM explains the following:
 - The L-1 beneficiary must be physically outside of the United States during the required one continuous year of employment.
 - The petitioner and the beneficiary must meet all requirements, including the one year of foreign employment, at the time the petitioner files the initial L-1 petition.
- Specifically, the PM states that while a qualifying foreign entity employs a beneficiary abroad, brief trips to the United States for business or pleasure in B-1 or B-2 status tolls the one continuous year of employment abroad.
- If the beneficiary made brief trips to the United States that year for a total of 60 days, the beneficiary would need to accrue at least an additional 60 days of qualifying employment to meet the one-year foreign employment requirement.
- On arrival in the United States, the beneficiary must assume an executive, managerial or specialized knowledge position with the US affiliate, parent, subsidiary or branch office.
- Managers and executives may be issued and retain L-1A status for up to seven years; L-1B specialized-knowledge personnel may remain in the United States in that status for up to five years.
- For startup operations, L-1 visas are granted initially for a one year "new office" period.
- For visa extensions, startup companies must prove at the end of the year that they are "doing business" in the United States and have made progress toward becoming viable operating entities that need the services of managers, executives or personnel with specialized knowledge.
- If, at the end of the first year, the startup company is unable to prove that this progress has been made, it may be possible for the individual to receive an extension of an additional year to continue to grow the business.
- L-1B specialized knowledge visa holders may not work primarily at a worksite other than that of the petitioning employer if either of the following conditions will apply:
 - The work to be carried out will be controlled by a different employer.
 - The off-site arrangement will provide labor for hire, rather than service related to the specialized knowledge of the petitioning employer.

Extraordinary Ability—O-1

- The O-1 visa category is for persons of extraordinary ability in the sciences, arts, education, business or athletics.
- Separate tests for demonstrating extraordinary ability exist for the following categories of individuals:
 - Foreign nationals in the motion picture and television industries
 - Other foreign nationals Most foreign nationals must prove their claim of extraordinary ability by providing evidence of sustained national or international acclaim.
- They may enter the United States only to work in their fields, and US immigration authorities must determine that their entry substantially benefits the United States.
- O-1 petitions are submitted to the USCIS for adjudication, and in some instances must be accompanied by proof of consultation with appropriate US labor unions (particularly those representing individuals in the arts, entertainment or athletics).



TYPE OF VISA	DOCUMENTATION	VALIDITY	ELIGIBILITY
B-1 Visa	<ul style="list-style-type: none"> • A Nonimmigrant Visa Electronic Application • A passport valid for travel to the United States • One (1) 2"x2" (5cmx5cm) photograph taken within the last six months • 10-year travel history • List of siblings and children 	6 months	<ul style="list-style-type: none"> • B-1 status is issued to people temporarily visiting the United States to engage in business on behalf of foreign employers. • A B-1 visitor must retain unrelinquished domicile in the foreign country to where he or she intends to return at the conclusion of his or her temporary US stay.
H1-B Visa	<ul style="list-style-type: none"> • Valid original passport • All old passports held • One photograph as per specification. • US Visa Application Form DS-160 confirmation page stamped at the Visa Application Center (VAC) • US Visa Application Fee payment receipt. • Visa Interview appointment letter. • Original Notice of Action-I-797. • Blanket LI applicants must carry the original I-129 and a copy of the Notice of Action I-797. 	Maximum 6 years	<ul style="list-style-type: none"> • The H-1B category covers foreign nationals employed in specialty occupations that require a theoretical and practical application of highly specialized knowledge, as well as a bachelor's degree or the equivalent in the field. • Before applying for an H-1B visa, an employer must file a Labor Condition Application (LCA) with the Department of Labor (DOL) and certify that, among other things, the foreign national will be paid at least the prevailing wage for the proffered position.

H-3 Visa	<ul style="list-style-type: none"> • Form I-129 and Form I-797 • Valid passport • Birth certificate • One photograph meeting the US Visa Digital Image Requirements • Documents which prove your intent to return to your home country such as a property deed, apartment lease, or future job contract 	<p>Maximum 2 years</p>	<ul style="list-style-type: none"> • Trainees must participate in structured training programs at US companies. • The programs must incorporate theoretical and practical instruction, and may not consist solely of on-the-job training. • The training must be unavailable in the foreign national's home country, and the skills acquired must apply to work outside the United States.
L-1 Visa	<ul style="list-style-type: none"> • Documentation verifying the corporate relationship between the U.S. company and the foreign company • Documentation verifying capitalization structure of the company • Detailed job description and requirements for the position • Documentation proving that you have worked in the foreign company for a continuous period of over one year in the preceding three years in an executive or managerial capacity • Copies of applicable business permits/licenses and registrations • DOS Form DS-160, Nonimmigrant Visa Application. • A copy of your passport which is valid for at least six months beyond the period of stay in the U.S • Two identical color photographs • Resume 	<p>L-1A (up to 7 years); L-1B (up to 5 years)</p>	<ul style="list-style-type: none"> • L-1 visas may be issued to foreign nationals who are employed abroad in executive or managerial positions, or who hold positions involving specialized knowledge in the company's procedures, processes, services and/or products. • The L-1 beneficiary must be physically outside of the United States during the required one continuous year of employment. • The petitioner and the beneficiary must meet all requirements, including the one year of foreign employment, at the time the petitioner files the initial L-1 petition.

O-1 Visa

- A written consultation with a peer group in your area of ability
- A copy of your employment contract
- Evidence that you have received a major internationally recognized award, such as a Nobel Prize, or copies evidencing the following (Non-exhaustive List):
 - Receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor
 - Membership in associations in the field which require outstanding achievements as judged by recognized international experts
 - Published material in professional or major trade publications or newspapers about you and your work in the field
- A copy of your passport
- Passport style photograph

3 years

- The O-1 visa category is for persons of extraordinary ability in the sciences, arts, education, business or athletics.

07

VALUE ADD TAX

Value Added Tax

- The US does not have VAT.
- The United States does not have a federal level consumption tax, but most states and many municipal authorities have sales and use taxes.
- They are generally imposed as a percentage of the retail sales price and the combined state and local rate may rise above 10%.
- Each state has its own tax rate and rules regarding which purchases are taxable.

08

WITHHOLDING TAX

Withholding Tax

Dividends

- The gross amount of dividends paid by a domestic corporation to a foreign corporation generally is subject to a 30% withholding tax, unless the rate is reduced under a tax treaty or the income is Effectively Connected Income (ECI).
- Dividends paid by a narrow class of “grandfathered” 80/20 companies (a domestic corporation that derives at least 80% of its income for the three year testing period from active foreign business (its own or its subsidiaries) existing before 2011) are eligible for relief from gross-basis tax in the hands of foreign corporations.
- Dividends received by a foreign operation from another foreign corporation out of the latter’s earnings attributable to ECI are not subject to US withholding tax; the branch profits tax serves as a substitute for shareholder-level taxation of such earnings.

Interest

- The gross amount of interest received by a foreign corporation from US sources generally is subject to a 30% withholding tax, unless the rate is reduced under a tax treaty or a statutory exemption applies.
- Interest that is ECI and certain interest on portfolio debt obligations, short term obligations, bank deposits, bonds issued by state or local governments, and debts of grandfathered 80/20 companies generally may be exempt from withholding tax.

Royalties

- Royalties received by a foreign corporation for the use of property in the US are subject to a 30% withholding tax, unless the rate is reduced under a tax treaty or the income is ECI.

Fees For Technical Services

- There generally is only a tax on fees for personal services, including technical services if the services are performed within the US.
- If the services are performed in the US, such fees typically would be ECI.

TYPE OF PAYMENT	RESIDENTS		NONRESIDENTS	
	Company	Individual	Company	Individual
Dividends	N/A	N/A	30%	30%
Interest	N/A	N/A	30%	30%
Royalties	N/A	N/A	30%	30%

09

TERMINATION

- The Worker Adjustment and Retraining Notification Act (WARN) protects workers, their families, and communities by requiring employers with 100 or more employees (generally not counting those who have worked less than six months in the last 12 months and those who work an average of less than 20 hours a week) to provide at least 60 calendar days' advance written notice of a plant closing and mass layoff affecting 50 or more employees at a single site of employment.
- WARN makes certain exceptions to the requirements when layoffs occur due to unforeseeable business circumstances, faltering companies, and natural disasters.
- Employees entitled to notice under WARN include managers and supervisors, as well as hourly and salaried workers. WARN requires that notice also be given to employees' representatives, the local chief elected official, and the state dislocated worker unit.
- Severance pay is often granted to employees upon termination of employment.
- It is usually based on length of employment for which an employee is eligible upon termination. There is no requirement in the Fair Labor Standards Act (FLSA) for severance pay.
- Severance pay is a matter of agreement between an employer and an employee (or the employee's representative).

10

STATUTORY BENEFITS

- These are mandatory benefits as postulated by law.
- These include public holidays, sick leave, maternity leave, paternity leave, overtime pay, severance pay and 13th month pay.
- Statutory benefits also include social security benefits.

STATUTORY BENEFITS

- Public Holidays
- Maternity Leave
- Paternity Leave
- Sick Leave
- Overtime Pay
- Severance Pay
- Social Security Benefits





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