

Life after F-1: Path to H-1B and Permanent Residency

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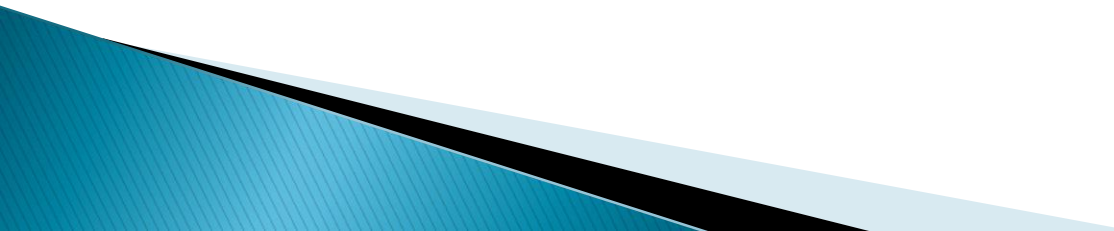
Summer 2024 Development: Overview of Keeping Families Together Process

The Department of Homeland Security introduces a new process (“Parole in Place”) to support noncitizen spouses and stepchildren of U.S. citizens, aiming to promote family unity and stability.

- ▶ Began on August 19, 2024.
- ▶ Applies to noncitizen spouses and stepchildren of U.S. citizens.
- ▶ Focus on individuals physically present in the U.S. since June 17, 2014.
- ▶ Marriage to a U.S. citizen must have occurred on or before June 17, 2024.
- ▶ Includes background checks and vetting for eligibility.
- ▶ Expected to benefit 500,000 spouses and 50,000 stepchildren.


Summer 2024 Development

D3 Waivers and DACA:

- ▶ State Department announces liberalization of 212 (d)(3) waiver adjudication at U.S. consulate offices for DACA-ians.
 - ▶ Allows DACA-ians (if they qualify) to obtain nonimmigrant visas and to return to the U.S. as nonimmigrants.
 - ▶ ARO can grant D3 waivers in “public interest” and can expedite.
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Impact of Election on Immigration Policy

Overview of Immigration Policy Trends

- ▶ **Objective:** Understanding potential changes and preparing for future immigration policies post-election.
 - ▶ **Focus Areas:** Policy changes, corporate strategies, and compliance.
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Historical Context of Immigration Policies

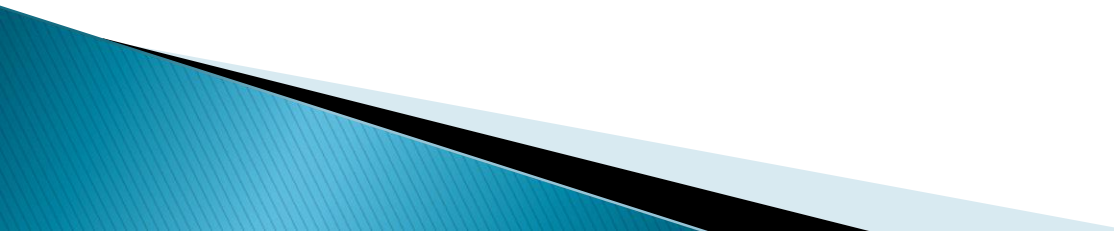
Overview of Immigration Policies by Administration

Policy Area	Obama Administration	Trump Administration	Biden Administration	Trump Administration (2025-28)
Enforcement	High deportation rates, focused on recent crossers and criminals	Increased ICE raids, zero-tolerance policy, family separation	Stabilization efforts, increased humanitarian admissions	Increased ICE raids, zero-tolerance policy, family separation
Programs	DACA, DAPA (court ended), expanded TPS, F-1 STEM OPT	Phased out DACA, canceled TPS for several countries, restricted asylum	Expanded TPS, DACA, parole benefits, H-1B modernization	Phased out DACA, canceled TPS for several countries, restricted asylum
Processing	Streamlined operations, introduced electronic I-94 online filings	Increased processing times, more complicated forms and RFE rates	Modernized processes, increased processing times due to pandemic	Increased processing times, more complicated forms and RFE rates
Adjudications	High denial rates initially, then decreased toward end of term	High RFE and denial rates for various visas	Decreased denial rates, modernized adjudications	High RFE and denial rates for various visas
Border Security	Encouraged E-Verify ended Cuban “wet feet, dry feet”	Prioritized border security, increased CBP officers and barriers	High border encounters, restricted asylum processes	Prioritized border security, increased CBP officers and barriers

U.S. Immigration in a “Nutshell”: Immigrant vs. Nonimmigrant Visas

No Status	Nonimmigrant	Immigrant (Green Card)	Naturalization
DACA	B Visitors	EB-1 Outstanding Research & Professors	Citizenship After 3 or 5 Years
U Visa	E Treaty Trade / Investor	EB-2 Advanced Degree Professionals	
245(i) Benefit	F Student	EB-3 Bachelors Degree & Skilled Workers	
Asylum	H Specialty Workers	EB-4 Religious Workers	
Marriage (USC + GC)	J Trainees	EB-5 Investors	
T Visa	L Intercompany Transferee	Family Based Immigration	
TPS	O Extraordinary Ability		
Parole in Place (PIP), etc.	P Performing Artists		
	R Religious Workers		
	TN For Canadian & Mexican Nationals (not dual intent)		

A Typical Path to a Green Card

- ▶ Optional Practical Training (OPT)
 - ▶ H-1B Visas (Employees)
 - ▶ Employment Based Permanent Residence (Green Card)
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H-1B Visas

Temporary Professional Visas

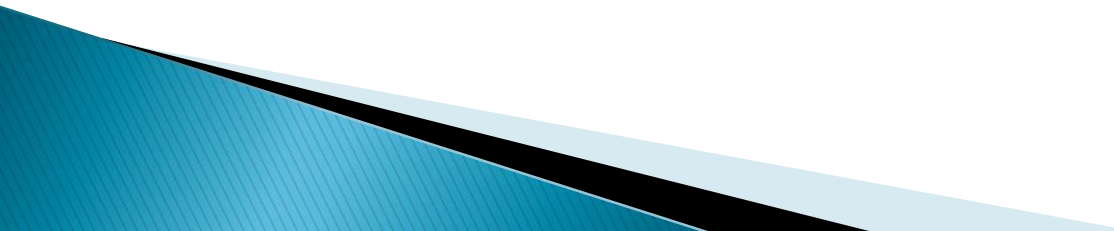
- ▶ For Professional-Level workers who are coming to the US to work for a US employer in a specialty occupation
 - Foreign National must possess at least the equivalent of a US Bachelor's Degree AND
 - Job offer must require at least a Bachelor's Degree AND
 - Job should be related to Degree

For Recruiting Purposes:

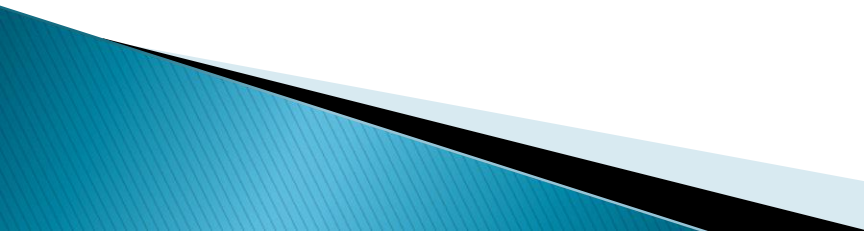
Ways to show the equivalence of a US Bachelor's Degree . . .

- Has a U.S. Bachelor's Degree
- Academic equivalency evaluation
- Experiential equivalency evaluation
- Combined Academic and experiential equivalency evaluation
- Use of 3:1 Rule in the Regulations – “Three for one Rule” 3 years of work experience can be substituted for one year of Bachelor's level academic study (e.g. 12 years work = Bachelor's)

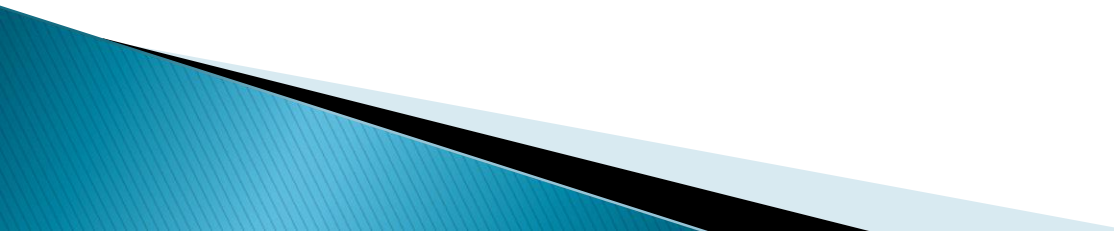
Examples of Specialty Occupations

- ▶ Some occupations in the regulations: Chemists, biologists, engineers, physicists, software developers, system analysts, accountants, economists, teachers, architects, lawyers, graphic designers, among others.
 - ▶ If an occupation is not in the regulations, is a Bachelor's Degree normally required?
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How to prove a Bachelor's degree is normally required?

- ▶ U.S. Department of Labor – Dictionary of Occupational Titles (DOT) – look for SVP: of 7 or more
 - ▶ U.S. Department of Labor – Occupational Outlook Handbook (OOH) – mention of minimum educational requirements
 - ▶ O*Net – online job zones
 - ▶ Other comparable positions from newspapers or online listings
 - ▶ Does the employer require a Bachelor's Degree?
- 

Cap on H-1B Visas

- ▶ Numerical Limitation: 65,000 annually.
 - ▶ Additional 20,000 visas for those with US Advanced degrees.
 - ▶ Cap was met during the registration period for FY 2024-2025 receiving over Approximately 470,342 registrations for both Advanced and Bachelor's degrees.
 - ▶ Roughly 36.6% of eligible registrations requested consideration under the Advanced degree quota.
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Looking Ahead to March 2025: The H-1B Lottery Process

- ▶ Business need to identify people early
- ▶ Master's cap and regular cap numbers
- ▶ Pre-registration process
 - Electronic submission
 - \$10 fee for each beneficiary (increase to \$215 in 2025)
 - March 6 – March 22 (2024-2025 H-1B Lottery)
- ▶ Post-registration process
 - Notification of selection through online account
 - File petitions only for selected beneficiaries

Filing and Start Date

- ▶ Approx. March 6 – March 22 - H-1B registration
- ▶ April 1st - filing for cap cases
- ▶ October 1st – H-1B start date
- ▶ **Cap-Gap** work through October 1st for pending or approved H-1B Visas

Fiscal Year 2024-2025 H-1B Cap Season: H-1B REGISTRATION FINAL RULE

- ▶ **Introduction of Beneficiary-Centric Selection Process:**
 - Selections based on individual beneficiaries instead of registrations.
 - Aims to ensure equal selection opportunity for all applicants.
- ▶ **Start Date Flexibility:**
 - Allows for filing with start dates after October 1, maintaining consistency with current policy.
- ▶ **New filing fees went into effect on April 1, 2024**
 - \$780 for employers with 26 or more F/T employees.
 - \$460 for small employers (25 or less) and nonprofit organizations

Fiscal Year 2024-2025 H-1B Cap Season: H-1B REGISTRATION FINAL RULE

- ▶ **Asylum Program fee:**
 - \$600 for employer with 26 or more F/T employees
 - \$300 for small companies
 - \$0 for nonprofit organizations
- ▶ **Increased Premium Processing fee \$2,805 (and additional increases in the future)**
- ▶ **Online Filing Launch:**
 - Introduction of online filing for Form I-129 and associated Form I-907 for non-cap H-1B petitions starting February 28, 2024 and April 1, 2024 for H-1B Cap.


Period of Validity

- ▶ Generally valid for a total of 6 years
- ▶ Time spent outside of the US can be recaptured
- ▶ Some exceptions available where additional time in H-1B status will be granted in 3 years increments beyond the 6 years period (AC-21 - I-140 Approval or GC pending for 365 days+)

Employer Specific

- ▶ H-1Bs are employer specific, but
 - Concurrent H-1Bs are permitted (good strategy to avoid layoff/terminations)
 - H-1Bs are portable (start work when “properly filed”)
 - Part-time employment is permitted
 - If an H-1B employee moves locations outside the MSA, an H-1B Amendment must be filed (Case: Simeo Systems)

Exemptions from the H-1B cap

- ▶ Current H-1Bs seeking extensions or transfers to another employer (the cap limits the number of requests for initial employment that CIS may approve each year)
 - ▶ Concurrent H-1B petitions
 - ▶ Statutorily exempt employers such as institutions of higher education and nonprofit research organizations
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Employer Obligations for H-1B: The Labor Conditions Application (LCA)

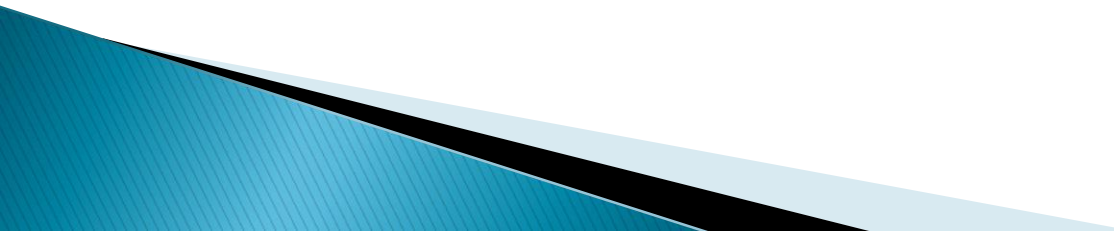
- ▶ Attestations made to the US Department of Labor (DOL) by an employer seeking to hire employee(s) as an H-1B worker(s).
- ▶ Sets forth the number of workers sought, the occupational classification, the prevailing wage, the method used to determine the prevailing wage, and the actual wage rate paid
- ▶ LCA must be available for public inspection within one day of filing the LCA with the DOL
- ▶ Must be posted in 2 conspicuous locations for 10 business days.

H-1B Alternatives & Strategic Advice

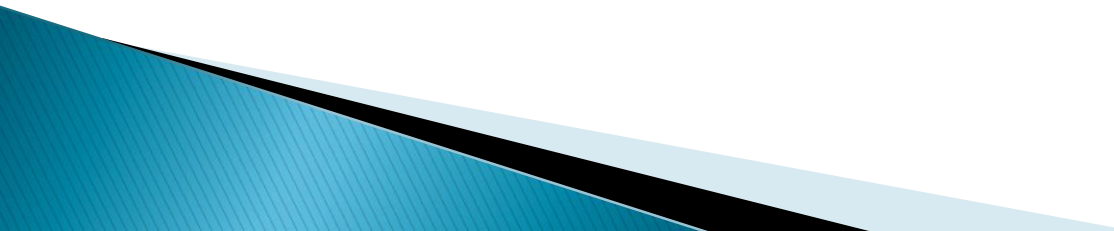
- New Registration process and March filing leads us to Request more information upfront.
- Set expectation with employer earlier in the new year.
- Prepare Plan-B (backup plan), - H-1B Alternatives
 - ▶ E Visa
 - ▶ L Visa
 - ▶ O Visa
 - ▶ P Visa
 - ▶ R Visa
 - ▶ B-1 Visa
 - ▶ TN Visa
 - ▶ E-3 Visa
 - ▶ U Visa
 - ▶ I Visa
 - ▶ J Visa

Employment Based Permanent Residence

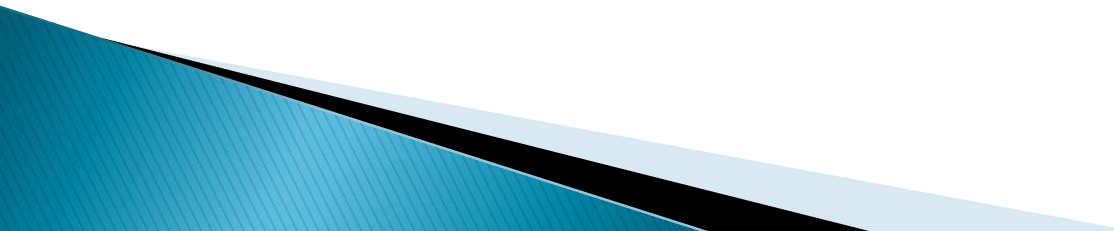
Requirements:

- ▶ Full-time employment
 - ▶ Attainment of DOL Labor Certification
 - ▶ Ability to pay
 - ▶ Availability of Immigrant visa number
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1st Preference (EB-1): No Labor Certification Required

- ▶ Aliens of Extraordinary Ability
 - self-petition possible
 - ▶ Outstanding Professors & Researchers
 - ▶ Multinational Managers
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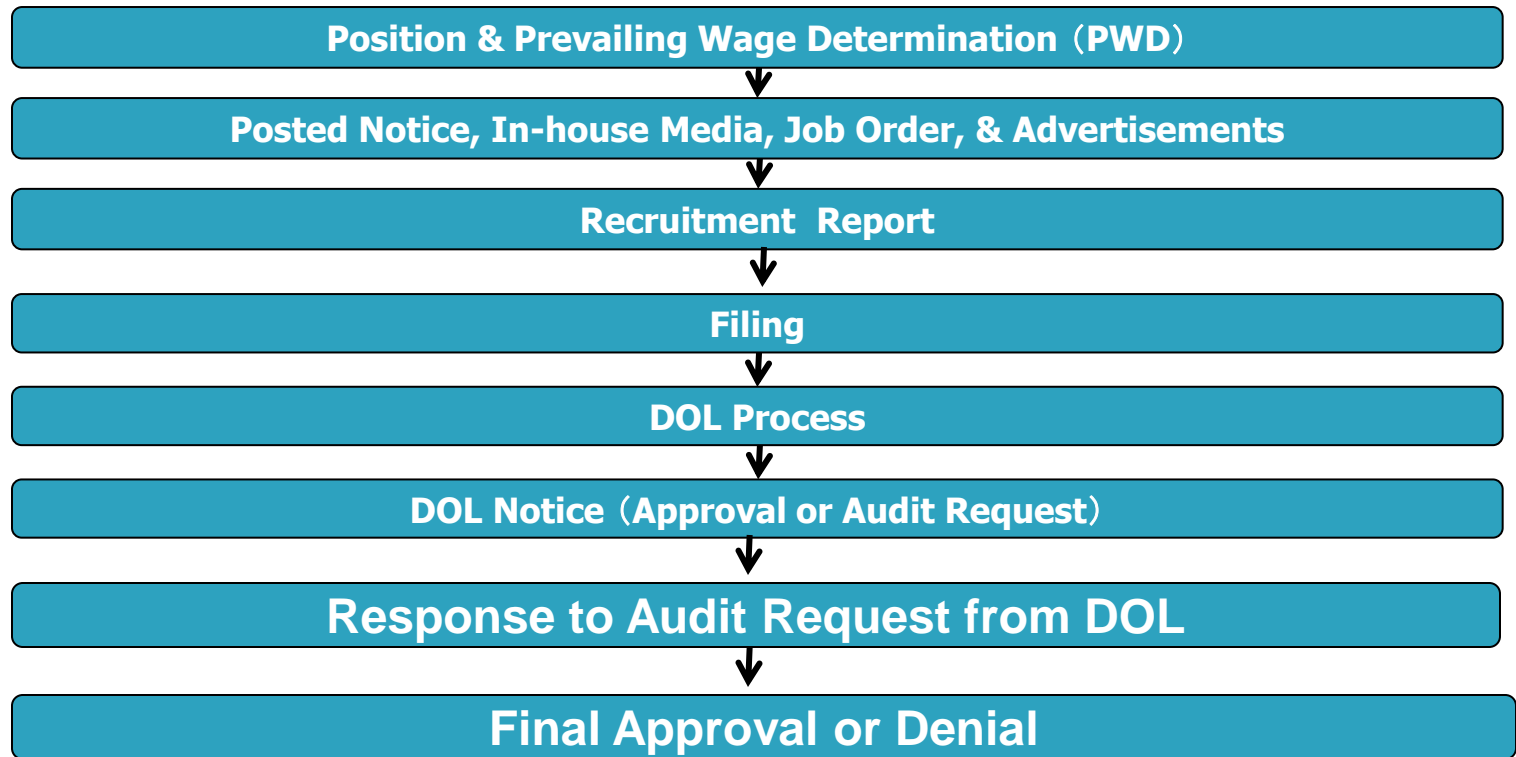
EB-1 Evidence

- ▶ Publications
 - ▶ Presentations at International Symposia
 - ▶ Judging the Work of others
 - ▶ International Prizes
 - ▶ Patents
 - ▶ Contribution of Original Research in the field
 - ▶ Membership in Professional Organizations
 - ▶ Peer review
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2nd Preference (EB-2): Labor Certification Usually Required

- ▶ Advanced Degree Professional
 - Job requires a degree beyond a BA
- ▶ Three types of green card routes:
 - ✓ Labor Certification (PERM)
 - ✓ National Interest Waiver (NIW)
 - ✓ Schedule A Group II

Procedure for PERM



National Interest Waiver: NO Labor Cert Required (Cont.)

- ▶ Seeking employment in an area of “substantial intrinsic merit”
- ▶ The benefit will be national in scope
- ▶ The national interest would be adversely affected if a labor certification (PERM) were to be required
- ▶ Blog Link: US eases tests for Green Cards - http://visaserve.com/lawyer/National-Interest-Waivers_cp15054.htm#niwupdate

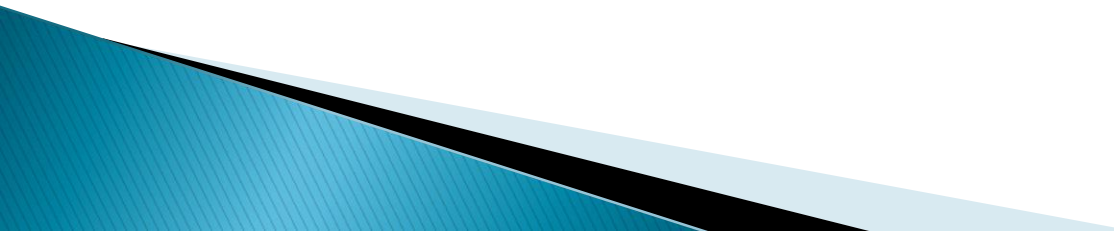
EB-2 National Interest Waiver Green Card

- ▶ Implemented under IMMACT'90.
- ▶ Mississippi Phosphate Case.
- ▶ N.Y. State Department of Transportation.
Prong # 3 – The National Interest would be adversely affected if a labor certification were required.
- ▶ AAO Precedent Decision in Dhanasar liberalizes legal standard.
- ▶ Recent practice guidance tighten – up legal standards on NIW cases.

EB-2 National Interest Waiver Green Card OUT WITH THE OLD

Old subjective test (NYSDOT case)	New tests (Dhanasar case)	Impact
The applicant's area of employment is of substantial 'intrinsic' merit	The applicant's proposed endeavor has both substantial merit and national importance	Removal of the term 'intrinsic' will reduce subjectivity
Proposed benefit from the applicant's endeavor (activity) is 'national in scope'	The applicant is well positioned to advance the proposed endeavor	It is a test focused on skills and qualifications of the applicant and offers more clarity
National Interest would be adversely affected if a labor certification was required	On balance, it would be beneficial to the US to waive the requirements of a job offer & Labor Certification	A more balanced approach, which favors entrepreneurs and qualified applicants

3rd Preference (EB-3): Labor Certification Required

- ▶ Aliens who hold Bachelor's degrees and are members of the professions
 - ▶ Aliens capable of performing skilled labor
 - ▶ Aliens capable of performing unskilled labor
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Immigration Reform and Control Act of 1986 (“IRCA”)

- ▶ 11/6/1986
- ▶ Requires that all employers complete Employment Eligibility Form (I-9) for newly hired employees.
- ▶ Designed to control the problem of illegal immigration
- ▶ Focus by IER (part of the DOJ) on ensuring
 - No Discrimination
 - No Document Abuse
 - Fair employment practices for ALL U.S. workers.

Questions?

Please contact our office for further information:

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Thank You

