DataOnDemand
How-To Guide

Identifying the Prevailing Wage for H-1B Employees

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Identifying the Prevailing Wage for H-1B Employees

What is a prevailing wage and when would I use this information?
Prevailing wage is defined by the Department of Labor (DOL) as "the average wage paid to similarly employed workers in a specific occupation in the area of intended employment."[1] Within higher education, prevailing wages are typically used when an employer hires an employee who is a foreign worker and has H-1B status. Prevailing wages are also used to determine pay for H-1B employees during nonproductive times.

How can I use DataOnDemand to obtain prevailing wage information?
CUPA-HR's DataOnDemand tool can be used to identify the prevailing wage for specific positions, as CUPA-HR's data collection procedures follow all DOL requirements for reporting a prevailing wage. DATAONDEMAND allows you to identify the prevailing wage for any position within seconds. This guide will help you answer questions like:

- **What standards does CUPA-HR follow to ensure all required DOL requirements specific to prevailing wage are being followed?**
- **What is the prevailing wage pay requirement for H-1B employees during nonproductive times?**
- **How do I identify the prevailing wage for specific administrative, professional, and faculty positions within my institution?**

What standards does CUPA-HR follow to ensure all required DOL requirements specific to prevailing wage are being followed?
DOL has strict guidelines for setting a prevailing wage. CUPA-HR's survey procedures follow all DOL guidelines in identifying and setting a prevailing wage.[2] Specifically, CUPA-HR collects data annually, makes regional comparison groups available to help determine the appropriate prevailing wage, includes job titles and descriptions within CUPA-HR's *Survey Participation and Information Template*s, follows all guidelines for agencies stated in the American Competitiveness and Workforce Improvement Act, and calculates the prevailing wage based on weighted averages within CUPA-HR salary data.[3]

What is the prevailing wage pay requirement for H-1B employees during nonproductive times?
Employees are placed in a nonproductive, unpaid status in conditions related to their employment (e.g., furloughs, lack of assigned work, lack of a permit, or studying for a licensing exam).[4] However, per DOL, H-1B employees are required to be paid the prevailing wage during nonproductive times.[5]

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[1] U.S. Department of Labor, Employment & Training Administration. (2020, January). *H-1B, H-1B1 and E-3 Specialty (Professional) Workers*. (Online Article).

[2] To review each DOL prevailing wage guideline and compare to CUPA-HR's survey procedures, please review *CUPA-HR's Comparison of DOL OES Wage Guidelines and CUPA-HR Survey Procedures* fact sheet.

[3] Hahm, J.S. (2000). American Competitiveness and Workforce Improvement Act of 1998: Balancing Economic and Labor Interests Under the New H-1B Visa Program. Cornell Law Review, 85(6), 1673-1702. Retrieved from https://scholarship.law.cornell.edu/clr/vol85/iss6/3/

[4] U.S. Department of Labor, Wage and Hour Division. (2016, November). *Fact Sheet #62I: Must an H1-B employer pay for nonproductive time?* (Online Article).

[5] Ibid.

How do I identify the prevailing wage for specific administrative, professional, and faculty positions within my institution?
DataOnDemand allows you to create comparison groups based on several factors, including state, region, and affiliation. Using the New Group Wizard, you will create a comparison group of non-profit institutions in a physical area that includes the location of your institution. You can start as specific as your institution's metropolitan statistical area (MSA). It is uncommon for data to be available at the MSA level, so you can then expand as necessary by creating a comparison group of institutions that are in your state, Census division, or Census region.

Important: Per DOL guidelines, you cannot filter a prevailing wage comparison group on any criteria other than location (and ensuring you only include non-profit institutions of higher education). The comparison groups you usually use for your typical benchmarking needs are likely inappropriate for use with prevailing wage.

Step 1: Prepare for the Analysis

To identify a prevailing wage, you will make use of the *Prevailing Wage Report* (for administrators, professionals, or faculty) in DataOnDemand. Before beginning your analysis, you will need to gather:

- **Information on which positions you need a prevailing wage for within your institution.** To match your positions to CUPA-HR positions, refer to the *Survey Participation and Information Templates* for position numbers and descriptions. If your institution participates in CUPA-HR surveys, your institution's position matches are already in DataOnDemand.

- **Information on the Metropolitan Statistical Area (MSA), state, or census division of your institution.** To construct appropriate comparison groups, you'll need to create a comparison group of non-profit institutions within your institution's Metropolitan Statistical Area (MSA), state, census division, or other appropriate geographical region. **Do not use CUPA-HR public comparison groups for prevailing wage reports, as they can contain for-profit institutions**.

Example: Tenured/Tenure Track Associate Professor of Mathematics at an institution within the New York metropolitan statistical area.
Throughout this guide, we'll use an example to illustrate the process of identifying the prevailing wage for a specific position within a specific region. Let's say you are at an institution within the New York MSA and need to identify the prevailing wage for a tenured/tenure track associate professor of mathematics who is an H-1B status employee.

First, you will need to review the "Position Descriptions" tab or "CIP Codes" tab of the corresponding *Survey Participation and Information Template* to identify the position or discipline where you need to determine the prevailing wage. SPITs can be downloaded from the CUPA-HR website via the link above or directly from DataOnDemand by clicking *Downloads* in the top menu bar, then expanding the sub-menu:

Now that you know the positions or CIP codes for which you wish to identify a prevailing wage, you can proceed to DataOnDemand to begin setting up your comparison group and reports.

Step 2: Create a Comparison Group

The easiest way to create a comparison group is to make use of the *New Group Wizard* in DataOnDemand. Once logged in to **Surveys Online**, navigate through the menu to *DataOnDemand > Comparison Groups*. Click the *New Group Wizard* button to get started.

Our example institution is located within the New York MSA. To adhere to DOL guidelines, we want to create a comparison group that includes only non-profit institutions located within this specific MSA. Do not filter on any other criteria such as student enrollment or Carnegie classification; DOL allows only filtering by location. Use the settings below in the *New Group Wizard* to create a comparison group based on this MSA characteristic.

| Criteria	Location in Wizard	Selection	Example Screenshot
Include only institutions that are within the New York Metropolitan Statistical Area	*Participation and Survey Variables > Other Variables > Metropolitan Statistical Area*	NY-New York	
Include only non-profit institutions	*Other Classifications > Affiliation*	Public, Private Independent, and Private Religious	

After completing these selections, click the *Search* button to refresh the page and view the table of results at the bottom of the screen. For detailed information about the other filtering options available in the wizard, visit the CUPA-HR User Guide and Tutorials web page.

When using the *New Group Wizard*, always review the institutions identified in the search and verify that the number of institutions is large enough. In general, the more institutions in your group, the more reliable data you can generate.

						80 Institutions					
Institution Name	Carnegie Classification 2018	Affiliation	Student FTE	Faculty FTE	Staff FTE	HR FTE	CHRO Reporting	FT Faculty Union	Adjunct/PT Faculty Union	Staff Union	Gra Stu Uni
Vaughn College of Aeronautics and Technology (Flushing, NY)	Baccalaureate/Associate's Colleges: Mixed Baccalaureate/Associate's	Private Independent	1458.4	40.0	133.0						
Bank Street College of Education (New York, NY)	Special Focus Four-Year: Other Special Focus Institutions	Private Independent	576.7	50.7				Yes		Yes	

Once you are satisfied with your comparison group, add a name and detailed description of your selection criteria in the boxes below the results, then save your comparison group. This group will now appear in *Your Personal Groups*.
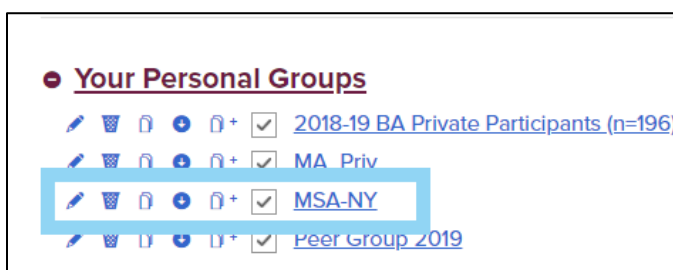
Once this group has been used to run a report it becomes "locked" and cannot be changed by fewer than three institutions at a time. This is a privacy protection to ensure data confidentiality. *Therefore, it is important to ensure that your comparison group contains exactly the institutions you want before you go to the next step.[6]*

To prepare for the possibility that there is insufficient data to determine a prevailing wage at the MSA level, repeat Step 2 to create a comparison group of non-profit institutions in the next smallest geographic area – in our example, non-profit institutions in the state of New York as opposed to limiting to just the New York City MSA.

> **TIP:** DOL **strongly prefers** that your wage is based on at least 30 individuals' salaries.
>
> To increase this number, broaden your search criteria range or use fewer filters.

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[6] 6 U.S. Department of Labor, Employment & Training Administration. (2015, December). Effects of the 2016 Department of Labor Appropriations Act. (Online Article).

Step 3: Run Your Report(s)

To identify the prevailing wage for a specific position, you'll run the *Prevailing Wage Report* (available for administrative, professional, and faculty positions) in DataOnDemand.

Navigate to *DataOnDemand > Survey Reports*, expand the menu for *Reports Organized by What You Want to Do,* and expand the sub-menu for the survey where the position or discipline in which you're interested is found. In the sub-menu, locate *Obtain Data for a Prevailing Wage for DOL.* Click the name of the report you wish to use to begin.
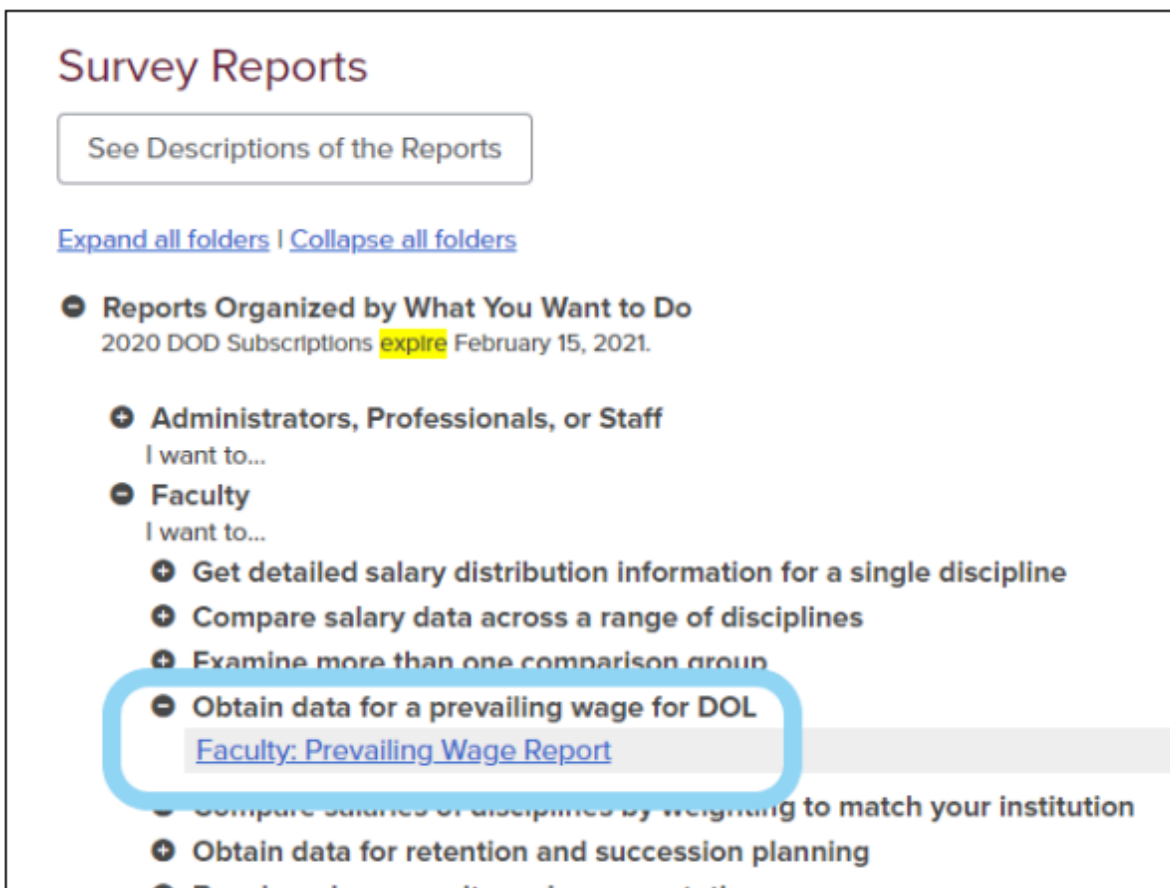
When you click on your desired report, you will arrive at the *Reports Parameters* page. Most settings default to our recommended settings (e.g., most recent year, output format). Detailed information for understanding and customizing report settings for all DataOnDemand reports can be found in the *DataOnDemand User Guide.* To run your report, you will need to select your comparison groups and position.

For *Comparison Group,* select the new groups you created in Step 2. The first comparison group you select should be the smallest geographic area (i.e., non-profit institutions in the New York City MSA). The second comparison group you select should be the next smallest geographic area (i.e., non-profit institutions in the state of New York).

Your final documentation submitted to the DOL should use the two comparison group functionality of the report to show the DOL that you're using the group you selected because it is the smallest geographical area possible that returned sufficient data. For instance, if you use the New York State comparison group for your final submission, you need to show the DOL that the next smallest geographical area (i.e., New York City MSA) had too few incumbents when you attempted to use that comparison group for the report.

To choose which position to run a prevailing wage for, you'll need to set the position setting (if you are running a prevailing wage for an Administrative or Professional position)*,* or you will need to set the *Rank, Tenure, and Discipline* settings (if you are running a prevailing wage for a Faculty position) within the *Report Parameters* page.

Click the *Go to Report* button at the bottom of the settings page to run the report.

Returning to our example, you are interested in identifying the prevailing wage for a tenured/tenure track associate professor of mathematics within your MSA of NY-New York. You will now run the *Prevailing Wage Report* for faculty. After setting your *Comparison Group* to the MSA-NY group you just created in Step 2, you will choose *Associate Professor* from the *Rank drop-down menu,* choose *Tenured/Tenure Track* from the *Tenure* drop-down menu*,* select *27.01 Mathematics* from the *Discipline drop-down menu,* and click *Go to Report* to find the prevailing wage for this specific faculty rank, tenure status, and discipline.

In this example, the *Comparison Group*, *Rank, Tenure,* and *Discipline* settings are the only changes that need to be made. This will run the report with the recommended default settings for other options. When ready to proceed, you will simply scroll to the bottom of the report settings page and click the *Go to Report* button.
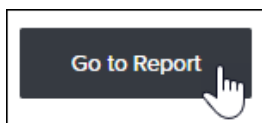
Step 4: Interpreting Your Results

The *Prevailing Wage Report* produces the following table, which includes the weighted mean and median salary, the unweighted mean and median, the number of incumbents reported for this specific position, and the number of institutions that reported data for this specific position. You can save this report as a PDF file, print it, and include it as a supporting document in connection with the H-1B application. This data may also be used to determine the DOL's nonproductive pay requirement for H-1B status employees during nonproductive times.[7]

Statistics

Mean of Incumbent Salaries (weighted mean)	$88,248
Median of Incumbent Salaries (weighted median)	$83,226
Mean of Institutional Average Salaries (unweighted mean)	$81,574
Median of Institutional Average Salaries (unweighted median)	$81,016
Number of Incumbents	97
Number of Institutions	22

Considerations

You may be required to provide documentation for how CUPA-HR's surveys meet DOL guidelines. Please refer to CUPA-HR's Comparison of DOL EOS Wage Guidelines and CUPA-HR Survey Procedures document within DataOnDemand. For more details on the statistics generated in each DataOnDemand report, or for detailed information about the variety of report settings options available, visit the CUPA-HR User Guide and Tutorials web page.

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[7] U.S. Department of Labor, Wage and Hour Division. (2016, November). *Fact Sheet #621: Must an H1-B employer pay for nonproductive time?* (Online Article).