

PERM—Labor Certification

The Department of Labor (DOL) **Program Electronic Review Management (PERM)** is the process by which an employer certifies that an open U.S. position does not have any qualified, able, willing or available U.S. applicants. This is required to file for most employment-based immigrant petitions.

Overview of the PERM process

1. **Prevailing Wage Determination** PERM employment-based immigrant worker prevailing wage determinations are obtained through the US Department of Labor (DOL) and the appropriate State workforce agency. In Texas, it is the Texas Workforce Commission (TWC). Employers must pay 100% of the prevailing wage at the time permanent residence is approved. A four-tier wage scale will be implemented.
2. **Recruitment for PERM** requires an employer to conduct a good faith recruitment prior to filing the labor certification application with the Department of Labor (DOL). Applications will be screened and either certified (approved), denied, or selected for audit.

Basic (non-professional) Positions require a prevailing wage determination and job order and from the State Workforce Agency, two Sunday newspaper ads, and a job posting at the place of employment.

Professional Positions require a job order placement and a prevailing wage determination from the State Workforce Agency, opening a job order with the State Workforce Agency for applicant referral, two consecutive Sunday newspaper ads (may substitute a professional journal ad for one of the newspaper ads) and three additional recruitment activities, such as website posting, external website, journal, radio and television ads, private employment firms, campus placement recruitment, job fairs, and other recruitment efforts. Ads must identify the employer, job location and sufficient job description.

3. **PERM electronically filed applications typically take 10-12 months for approval.**
4. **The DOL requires the employer to pay legal fees.** There are no filing fees for PERM applications.

The PERM labor certification process is a very unforgiving process.

There are strict timelines and deadlines, advertisements must be consistent from the first DOL filing to company postings to the printed newspaper ads, certain acronyms and abbreviations will not be allowed, non-objective criteria is not allowed, all minimally qualified applicants should be interviewed, there should not be any requirements that are not standard within the industry, the forms must be completed filled and accurate with all signatures and dates.

Most importantly, applicants can only be disqualified for a bona fide job-related reason.

PERM Recruitment and Advertising Guidelines

3 Mandatory Recruitment Activities

30-day posting with the State Workforce Agency

The job opening must be posted with the appropriate State employment agency for 30 consecutive days.

Two (2) consecutive Sunday newspaper ads

The employer must place two advertisements on two different Sundays in the newspaper of general circulation in the area of intended employment. Both ads must be placed more than 30, but no more than 180 days before filing. The ads may be placed on consecutive Sundays. If the job is located in a rural area with no Sunday edition, the employer may use the edition with the widest circulation. A suburban newspaper on a day other than a Sunday is not allowed.

Placement of the ad under an inappropriate heading or keyword would be considered a failure to make good faith efforts to recruit US workers.

The ad must list the name of the employer, the geographic area of employment, but only if the job site is unclear. For example, if applicants respond to a location other than the job site or if the employer has multiple job sites), and a description of the vacancy specific enough to apprise US workers of the job opportunity.

The employer may include the minimum education and experience requirements or specific job duties in the ad as long as those requirements also appear on Form 9089.

The ad must direct applicants to send résumés or report to the employer, as appropriate. The employer's physical address is not required. A central office or post office box may be designated for receipt of résumés.

The ad *does not need* to include the salary or a detailed listing of the job description and requirements. However, if the ad includes the salary, the salary stated must meet or exceed the prevailing wage.

Documentation of the ad can be supplied by a copy of the newspaper page or proof of publication supplied by the newspaper. Form ETA 9089 requires the employer to list the name of the newspaper and the date of publication for each ad.

If the job requires experience and an advanced degree, the employer may use a professional journal in lieu of one of the Sunday ads.

Internal Posting

A notice for the job must be posted at the physical place of intended employment for 10 consecutive business days.

3 Additional Recruitment Activities for Professional Positions

PERM regulations require that applications for professional jobs must have additional recruitment from the following:

- 1) job fairs
- 2) employer's web site
- 3) job search web site other than employer's
- 4) on-campus recruiting
- 5) trade or professional organizations
- 6) private employment firms
- 7) an employee referral program, if it includes identifiable incentives
- 8) campus placement notice, if the job requires a degree but no experience
- 9) local and ethnic newspapers if appropriate for the job opportunity
- 10) radio and television advertisements.

A web page generated in conjunction with a print ad counts as a website other than the employers. The additional recruitment steps must take place no more than 180 days before filing. The employer is not required to take different steps each month. Only one of the additional recruitment steps may take place within 30 days of filing. Form ETA 9089 requires the employers to specify the dates of each additional recruitment step. Alternative recruitment steps only require employers to advertise for the occupation involved in the application rather than for the job opportunity as is required for the newspaper ads. *The DOL has determined that the 3 additional recruitment steps must all be different*

Distinguishing between Professional and Non-Professional Jobs

A professional job is a job for which the attainment of a bachelor's degree or higher degree is a usual requirement.

Recruitment Report

Summary

The employer must prepare a recruitment report describing the recruitment and the results. The recruitment report must include the number of hires and the number of US workers rejected, categorized by the lawful job-related reasons for rejection. The CO may request copies of the US workers' résumés, sorted by the reasons for rejection.

Failure to Meet the Minimum Position Requirements

An applicant's failure to meet the employer's stated minimum requirements is a lawful reason for rejection; however, if a worker lacks a skill that may be acquired during a reasonable period of on-the-job training, the lack of that skill is not a lawful basis for rejecting an otherwise qualified worker. Training periods vary by occupation, industry, and job opportunity.

Retaining Documents

Supporting documents must be retained for five years from the filing date.

Fong•Ilagan, LLP works with clients to simplify the PERM labor certification process. To discuss your case with a board-certified attorney, please contact our office at 713.772.2300.