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What Does The PERM Green Card Process Require?

The first step in the permanent residence process for most applicants involves the filing of a PERM labor certification application to test the U.S. labor market. A labor certification will be approved only if the employer proves that there are no able, willing, qualified, and available U.S. workers for the sponsored position.

At the outset, the employer must define the minimum job requirements for the job position to be sponsored. For detailed information on this topic, please see our article "Making Sense of Minimum Job Requirements for Green Card Sponsorship." After the minimum job requirements have been defined, a prevailing wage determination for the position must be obtained from the USDOL based upon these minimum job requirements. The USDOL takes 45-60 days to provide a prevailing wage determination.

Salary is not required to be shown in any PERM advertisements. However, it must appear in a required 30-day job order placed with the state job bank and in the required posting notices placed at the location where the work will be performed.*

Mandatory Recruitment In All Cases:

- Place a 30 day job order with the applicable state job bank, which will forward resumes to the employer.
- Post the job opportunity information (including salary or a salary range the bottom of which is not lower than the prevailing wage) internally at the company for 10 consecutive business days in two conspicuous locations as well as in any electronic or print media that the company typically uses for similar positions.
- Place two Sunday ads in the local newspaper of largest circulation. (If the job is a professional one that requires an advanced degree plus experience, an employer may instead place one Sunday ad and one ad in a professional journal. However, this is generally not advised, since the professional journal ad may need to serve instead as one of the additional forms of recruitment.)

Additional Recruitment For Professional Positions:

If the sponsored job is professional, then the employer must also choose **three** of the following ten additional forms of recruitment:

- Advertise the position at a job fair.
- Post the job opening on the company's website.
- Place the ad on a website other than the company website. (The newspaper that placing the print ad will typically have an online ad service that can satisfy this requirement.)
- Conduct on-campus recruitment.

- Advertise the position in a trade or professional organization journal or newspaper.
- List the position with a professional recruitment firm (headhunter).
- Advertise in an established employee bonus referral program at the company.
- Advertise at a campus career services office.
- Advertise in a local or ethnic newspaper.
- Advertise by radio or television.

Applicants responding to the ads must be tracked. We recommend using a spreadsheet that shows all minimum job requirements and can be used to report results to the USDOL. This also serves as a helpful tool for keeping in focus the minimum qualifications being tested. If a candidate is clearly not qualified, each reason should be indicated on the spreadsheet. Applicants that might be minimally qualified must be contacted within 14 calendar days to determine whether they are, in fact, minimally qualified. If an applicant is minimally qualified and interested in the position, then the PERM labor certification cannot be filed.

The recruitment documentation must be kept by an employer for at least 5 years. Though all PERM labor certification applications are filed online without documentation, applications are subject to both random and targeted audits. If audited, an employer must supply the documentation within 30 days.

The following documents must be kept:

- A copy of the state job order and evidence that it was posted for 30 days.
- The original internal posting notices with dates of posting.
- Copies of Sunday newspaper print ads (and professional journal, if used).
- Documentation of all other recruitment, including dated copies of that recruitment.
- Documentation of "business necessity" for any special job requirements.
- A signed original recruitment report.

* When the green card is ultimately issued, the employer must begin paying the prevailing wage. However, the salary or salary range for the sponsored position must be posted at the outset of the green card process and cannot be below the prevailing wage. This can cause issues in the workplace if, for example, the sponsored employee is in L-1 status making \$85,000 and the prevailing wage is \$100,000. The employer is not required to pay \$100,000 unless and until the green card is issued, but the postings give the impression that the higher salary level is being paid presently. This is a consequence intended by the USDOL as part of the PERM market test.