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## **How Does An Employer Express Minimum Job Requirements For A PERM Green Card?**

A critical step in the PERM green card process is the establishment of minimum job requirements for use in the recruiting phase. Here are some important points to bear in mind:

- If the employer requires work experience as a minimum requirement for the job, then the sponsored employee must possess that experience and cannot count any work experience that they obtained after they joined the company, unless the “substantially different” exception or the “different FEIN” exception applies, as discussed at the end of this article.
- The required number of years of work experience should be kept to a reasonable minimum, since the USDOL will disallow any work experience requirement in excess of the Standard Vocational Preparation (“SVP”) rating for the job position. If the sponsored employee holds, for example, 15 or more years of experience, then an employer is understandably reluctant to assert that merely 3 years of work experience will suffice. To strike a balance, it may therefore be necessary to require 3 years of advanced experience.
- The job requirements should describe the position fairly, without being specifically tailored to the sponsored employee. However, they should not be so general that they fail to describe what a qualified candidate must indeed possess.
- An employer should not require any foreign language capability unless absolutely necessary, as doing so will automatically trigger an audit from the USDOL.
- The job duties must be set forth in a way that informs potential applicants of the nature of the position. They also provide context for the specific job requirements that are imposed. However, job duties are not job requirements and do not serve as a basis for evaluating candidates for the position. They should therefore be brief.
- The job requirements must be expressed quantitatively, so that the USDOL can evaluate whether an applicant is indeed qualified. Accordingly, discretionary requirements such as “working knowledge,” “thorough familiarity,” and “good communication skills” should be avoided.
- In order to withstand challenge, a minimum job requirement must be uniformly imposed at the company as a minimum requirement for the job. For example, if there are 5 employees in the Engineer I position, but only one of them holds an engineering degree, then the company cannot impose an engineering degree as a minimum requirement, unless the other four were hired so long ago that their credentials were not subject to the current standard.
- A short, specific list of minimum requirements is better than a long list containing items that really do not make a difference. For example, it is better to require “3 years work experience applying programmable logic controllers and control networks, including ProfiNet, ProfiBus, Ethernet IP, and DeviceNet communication protocols” than to require “3 years of software design” or “3 years of software design and use of MicroSoft Office, Word, Outlook, and Excel.”

Here are three examples of successful minimum job requirements:

1. Research Scientist–Polymer Synthesis, Los Angeles, California. Optimizes best methods to synthesize, analyze, scale up, or employ new polymers and additives for aerospace applications. Must possess a Ph.D. or foreign equivalent degree in Natural Sciences, Materials Science, Chemical Engineering, Physics, or Chemistry plus three years of work experience

involving aerospace polymer science research. Must hold three articles published or accepted for publication within the past five years in academic or publicly available patent literature regarding the physical and chemical properties of natural and synthetic or composite materials and ways to strengthen or combine materials or develop new materials with specific properties for application.

2. Pacific Rim Division President, Chicago, Illinois. Responsible for engineering business activities in Pacific Rim. Duties include strategic planning, optimization of business and engineering personnel, and reorganization of engineering and business systems. Must possess a bachelor's degree or foreign degree equivalent in mechanical engineering, industrial engineering, or materials science and 3 years work experience in the Pacific Rim as President or COO for a global company with branded products. 40% foreign travel required.
3. Electrical Technology Specialist, Detroit, Michigan. Analyzes and directs the integration of production and manufacturing systems with existing business systems and processes. Requires a bachelor's or foreign equivalent degree in Electrical Engineering and 3 years work experience (a) applying programmable logic controllers and control networks, including ProfiNet, ProfiBus, Ethernet IP, and DeviceNet communication protocols and (b) using a proprietary factory automation system and Siemens, Allen Bradley, and Mitsubishi automation systems.

### **The "Substantially Different" Exception**

As mentioned earlier, if the employer requires work experience as a minimum requirement for the job, then the sponsored employee must possess that experience and cannot count any work experience that they obtained after they joined the company. However, if the job position in which the sponsored employee obtained the work experience at the company is "substantially different" from the position being sponsored in the PERM application, then it can be counted. Substantially different is defined by the USDOL as involving job duties that are at least 50% different. This is a position that an employer should take only if necessary and clearly winnable.

**Example:** A company hires Bipin straight out of graduate school as an engineer and he works for 4 years as an Engineer I. They now wish to promote him and they also wish to sponsor him for a green card. If they sponsor him for Engineer II and require 3 years of work experience, they cannot count his work experience with the company because the positions are not substantially different. If, in contrast, they sponsor him for Design Engineering Manager and require 3 years of work experience, then they can count his work experience if his duties in the new position will be 50% or more different than his Engineer I duties. (As to whether/when he can/must move into the sponsored position, please see our Article "Making Sense of Job Position and Job Location Changes During the Green Card Process.")

**Example:** A company hires Dagmar as an Engineer II from a competitor, where she has worked as an engineer for 4 years as an Engineer I. They also wish to sponsor her for a green card. If they sponsor her for Engineer II and require 3 years of work experience, they can count her work experience with the competitor. The Engineer II position at the new company must, of course, uniformly require 3 years of work experience and the other employees in that position must possess that experience.

### **The "Different FEIN" Exception**

The USDOL treats employment under a different FEIN as qualifying. Therefore, if the sponsored employee obtained work experience for a related company abroad or in the United States (such as a parent, affiliate, or subsidiary), then the work at that related company can be counted, regardless of whether the position at the related company and the sponsored position at the sponsoring company are substantially different. This exception should be relied upon, of course, only when necessary.