



PERM LABOR CERTIFICATION PROCESS FAQs (FOR EMPLOYERS)

What is PERM?

PERM is often the first step in the permanent resident or “green card” process. When filing a PERM application, the sponsoring employer confirms that it has made a good faith effort to test the U.S. labor market and found no willing, able and qualified U.S. workers available for the position to be certified in the location of the job opportunity. In addition, the employer attests that the employment of the foreign national will not adversely affect the wages and working conditions of similarly employed U.S. workers. Upon approval of the application, the Department of Labor (DOL) will certify the position to be held by the foreign national as one for which U.S. workers are not available.



What steps are involved?

Generally, the steps are as follows:

Step 1: The foreign national employee and his or her manager each complete the appropriate questionnaires.

Step 2: Our firm drafts a job description based upon the information provided in the questionnaires for the employer’s review to ensure that:

- It accurately reflects the job duties and actual minimum requirements of the position;
- Your employer has not hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity; and
- Your employer does not require U.S. applicants to possess training and/or experience beyond what the foreign national possessed when hired.



Step 3: Our firm requests a prevailing wage determination from the DOL and the employee obtains educational diplomas and transcripts, as well as reference letters from prior employers to demonstrate that he or she meets the minimum requirements for the position.

Step 4: Upon confirmation of both of the above items, the employer initiates recruitment. Recruitment includes an internal physical posting notice, two Sunday newspaper ads, a 30-day job order placed with the State Workforce Agency (SWA) and three additional recruitment steps. The employer must review all resumes received and contact all potentially qualified candidates. Our firm will provide more detailed information regarding the legal standards for recruitment at the appropriate time.

Step 5: Once recruitment has been completed, a 30-day “Quiet Period” begins, during which the employer must continue to accept and review resumes.

Step 6: Our firm prepares the employer’s compliance file and submits the application online. The employer must respond to an automatic DOL email within 7 days verifying sponsorship. If the application is audited, a response must be submitted within 30 days.



Why are the job description and actual minimum requirements so important?

The job description must specify the actual minimum requirements for the offered position and should not be tailored to the foreign national employee. The job description will be used by the employer to evaluate whether U.S. workers who apply for the position satisfy the actual minimum requirements. The employer may determine that an applicant is not qualified for the job offered only if he or she does not meet the minimum requirements.





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In addition, the employer must not have hired any employee in a substantially comparable job with less training or experience. For example, it would not be acceptable for an employer to state that the actual minimum requirements for the position of Computer Systems Analyst at its company are a master's degree and two years' experience if there are other employees in the same or a comparable position who have a bachelor's degree and one year of experience.

The foreign national must also verify that he or she meets the minimum requirements as stated. Generally, experience or education obtained while working for the sponsoring employer cannot be used by the employee to satisfy the minimum requirements. If the PERM application is audited, the sponsoring employer may need to demonstrate and/or justify the validity of the actual minimum requirements listed on the PERM application. This may include supplying proof that all other individuals in the same or comparable position meet the minimum requirements as stated on the PERM application.



What is an audit?

An audit is issued by the DOL when more information is needed regarding the position's actual minimum requirements, your employer's recruitment efforts, or any other matter to adjudicate the application. In addition, the DOL may reopen a PERM case for a period of up to five years from the date the application was submitted, even after certification. Therefore, it is critical that your employer maintain the PERM compliance file for the required five-year retention period.



Does the offered salary need to be listed on the internal posting notice?

Failure to list the salary and/or failure to list a salary that is at least equal to the prevailing wage determination from the SWA on the posting notice will result in the denial of the PERM application. It is not necessary to list the salary in other recruitment efforts.