



DOL UPDATE ON PERM AND PREVAILING WAGE ISSUES

Posted on April 8, 2010 by Cora-Ann Pestaina

by Cora-Ann V. Pestaina

On April 5, 2010 AILA published the minutes of the DOL stakeholders teleconference held on March 25, 2010. See AILA InfoNet Doc. No. 10040533. These minutes presented some important/interesting information worth noting:

Employee Referral Programs:

The DOL now requires more from employers who utilize the Employee Referral Program in fulfillment of one of the three additional forms of recruitment required for professional positions under PERM. Specifically, the DOL now has new requirements as to what is considered “acceptable” evidence to demonstrate the “existence and use” of the Employee Referral Program. Thus far, employers have been able to utilize their existing Employee Referral Programs and to document its use by submitting a description of the program. In response to audits, the DOL has previously accepted photocopies of pages from the employer’s employee handbook describing the ongoing program.

Now, the DOL requires documentation that employees were made aware that they could refer applicants to the specific position sponsored for PERM. The DOL wants to see dated copies of correspondence to employees linking the Employee Referral Program to job openings within the company and to the PERM position in particular! The minutes suggest that employers execute a memo confirming the existence of an ongoing Employee Referral Program and addressing how the company’s employees were made aware that they could refer applicants to the PERM position.

While the PERM regulations do not require documentation that employees

were made aware of the specific PERM position, to be on the safe side and prevent a possible PERM denial and then motion/appeal down the road, employers may want to consider adding an “available positions” section at the end of the Employee Referral Program description, including a copy of the specific PERM ad(s) and posting the program in a conspicuous location on the business premises for a specific number of days (and publishing via employer’s intranet, if any) as they do with the Posting Notice.

Processing Issues:

PERMs have recently been moving more quickly because the DOL assigned some PERMS to adjudicators in DC and Chicago. (Let’s hope they keep it that way!)

Sunday ads are still required despite changes in the newspaper industry resulting in some newspapers being eliminated or in a reduction in the number of publication days for certain newspapers.

DOL is looking into implementing PERM fees. (It was too good to last much longer.)

Expect an increase in the number of applications subjected to supervised recruitment.

DOL is frustrated, and rightly so in my opinion, with employers and attorneys who still insist on filing PERMs via mail which consumes substantial DOL resources.

HealthAmerica Issues:

Denials where the PWD issued by SWA was too short or too long: DOL agreed that it is possible that these will be HealthAmerica type issues.

It is not clear what this means since HealthAmerica refers to typos on the PERM. If the SWA issued the employer a PWD valid for less than 90 days then this validity period must be listed on the PERM. The DOL previously advised (AILA InfoNet Doc. No. 07060461) that certifying officers are trained to know that the PWD is never valid for less than 90 days.

Prevailing Wage Determinations:

DOL verified that the Form 9141 certifying officers can see the extra words typed into various fields on the Form 9141 even if these words do not show

when we print the form for our records. But, the DOL pointed out that for PERM audit purposes, this will not help us and we have to find a way to prove what was on the form.

Form 9141 certifying officers are now trained to understand abbreviations like EE for Electrical Engineering and CS for Computer Science so we can save space here if needed.

IMPORTANT: On the Form 9141 put only the PRIMARY requirements that will be the PRIMARY requirements listed on the PERM. (So, it's not which requirements we think are higher (e.g. a BS+5 might be considered higher than the alternative MS+2 requirement) but it's what will be the PRIMARY requirements on the Form 9089!)

If there will be multiple unanticipated worksites (as with many IT professionals), still answer NO to the Form 9141 question about multiple worksites and in another field such as D.a.6 include the language about unanticipated work locations.

DOL is working on fixing the problem with the missing SOC codes on Form 9141. It will take a while.

If we neglect to include information on the Form 9141 it will be rejected but where the certifying officer just needs clarification on an issue, they will not reject but will e-mail the attorney or employer and allow 7 days for response. Once the response is received, the PWR will be promptly adjudicated.

DOL is getting ready to increase the number of officers which will help reduce the processing time on PWDs.