

FAQ: The Labor Certification (LC) Process (PERM)

Phase 3 - Preparing & Filing LC

As part of the employment-based Green Card progression, an employer must generally undertake a **Labor Certification** (LC) process. This is a long and complex process that requires employers to test the U.S. labor market.

The **PERM** (Program Electronic Review Management) is the system that the U.S. Department of Labor (DOL) uses for employers to file the LC.

At the end of the process, the DOL should certify that:

- ✓ there are no U.S. workers able, willing, qualified, and available to accept the job opportunity in the area of intended employment and,
- ✓ that employment of the foreign worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

To facilitate your understanding of this process, we have divided the process into three phases:

- **Phase 1 - Job opportunity and Prevailing Wage Determination (PWD)**
- **Phase 2 - Recruitment (testing the U.S. labor market)**
- **Phase 3 - Preparing and Filing LC (PERM)**

This FAQ focuses on Phase 3 of the LC process.

1. What is involved in Phase 3 of the process for the LC?

A permanent labor certification issued by the Department of Labor (DOL) allows an employer to hire a foreign worker to work permanently in the United States. After Phase 1 PWD and Phase 2 Recruitment, this phase involves preparing and drafting all sections of form 9089 through DOL's PERM system.

2. When can an employer file the LC despite layoffs of U.S. workers?

If an employer has performed layoffs within the four to six months prior to the filing of the LC or plans to start layoffs in the next six months, it could stop the filing of the LC.

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For a layoff to affect the LC filing, the layoff must have occurred in the same area of intended employment as the LC position and be in an occupation that is the same or “related” to the LC position. The laid-off employee(s) must be considered “U.S. worker” for LC purposes (namely, U.S. citizen, lawful permanent resident (green card-holder), or asylee(s)/refugee(s)).

To proceed with the LC filing where a layoff occurred as described below, the employer must analyze the layoff and, keep and provide documentation that it has notified all of the potentially qualified laid-off U.S. workers of the job opportunity and considered them.

This complex, sensitive, and time-consuming layoff analysis and documentation can be avoided with proactive planning and awareness of potential layoffs and their timeline.

3. What happens if there is a mistake (even a typographical error) in the LC application?

The DOL could deny the LC for trivial typographical errors, such as spelling mistakes in the employer's name or the foreign worker's job title.

Every single entry on the LC must be extra carefully reviewed before the LC is filed. Typographical errors can't be corrected and could result in having to withdraw the application and refile it. At times, withdrawing/refiling is not possible because the ads have expired and the whole process needs to be re-done.

4. How long does it take the DOL to process a PERM application?

Currently, “clean” applications (without an audit or other request) are taking 6 to 7 months from filing of the PERM application to certification.

5. What is a PERM audit?

A PERM audit is a request for documentary evidence of the LC process. Because LC applications are filed electronically with no supporting documents, the DOL regularly issues audit requests asking the sponsoring employer to provide evidence they followed the proper LC procedures.

6. What might trigger a PERM audit?

There is no audit criteria listed in the PERM regulations. Nationally, the DOL audits about 1 in 3 LC applications, most by random selection. An audit increases the likelihood of the LC denial because DOL can deny it for any one reason.



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Additionally, DOL audits can be triggered by various economic, political, and other factors such as:

- DOL's labor market data reflects potential available U.S. workers;
- Position requirements that appear tailored to the sponsored worker;
- LC application information reflects that the sponsored worker might not meet the minimum requirements of the position;
- A sponsoring company that might appear not to have the financial resources to pay the required prevailing wage;
- A foreign language requirement.

7. What happens if an LC is selected for an audit?

The employer will receive a letter from DOL's Certifying Officer (CO). The letter outlines the documentation that the employer must submit. The CO is not required to explain, even briefly, the reason for the audit.

The employer is required to respond to the audit and provide extensive supporting documentation to the CO within 30 days of the audit request.

Thus, it is essential to proactively keep detailed records of the process and have the potential audit-response documentation ready at the time the PERM is filed.

The employer's substantial failure (which is not defined) to provide the audit documentation requested will result in a denial of the application and could lead to the employer having to conduct DOL-driven supervised recruitment for up to two years for future LC filings.

After the documentation has been submitted, the CO can approve the application, request additional evidence or deny the application. An audit can lengthen the LC process by 7 months to over a year.



8. What documentation is the employer required to provide during an audit?

In response to the audit, an employer must provide, among others, evidence of the recruitment steps taken; copies of all ads and notices posted; a recruitment report listing U.S. worker applicants and legal reasons for disqualification; business necessity reasons for position requirements beyond those that DOL's data considers normal.

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9. Can I withdraw an application if it is selected for audit?

No. If the application is selected for an audit, the employer cannot withdraw the application and must respond to the audit.

10. Does the PERM LC expire?

Yes. The LC expires 180 days after it is certified by the DOL. The employer and employee must be ready to file the I-140, Immigrant Petition, within the validity of the LC.

ADDITIONAL RESOURCES

Visit our [Resource Hub](#) and explore our FAQs, Blogs, Videos, and more for additional information about the LC PERM process and other related corporate immigration and compliance questions.

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