

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

Phase 1 - Prevailing Wage Determination

1. What is the Labor Certification / PERM Process?

As part of the employment-based Green Card progression, an employer must generally undertake a **Labor Certification** (LC). 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 1 of the process.

2. Why is the PERM/LC process complex?

The process is far from intuitive. It involves technical, highly regulated and time-consuming work. It requires substantive legal knowledge of stringent and always evolving case law, process, and requirements. It is critical to have practical experience dealing with the recruitment process, timing, and terminology.

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Given the high time and financial commitment required to undertake the LC process, employers must enter the process with flexibility and take time to carefully understand and undertake the required aspects of the process. You should hire an experienced immigration attorney if you are interested in filing an LC for a foreign national.

3. What is involved in Phase 1?

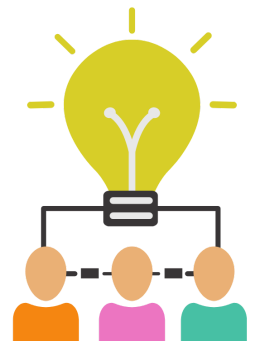
The first phase of the process involves assessing the likelihood of LC approval, developing a long-term case strategy; the very important development of the job title and requirements; employer registrations for PERM and State Workforce Agency; and the analysis, strategy, drafting, and filing of the Prevailing Wage Request with the Department of Labor.

TEAMWORK

4. What does the Marks Gray Immigration Team do for clients during Phase 1?

Among other services, our team will:

- Discuss and assess the likelihood of LC approval by collecting and analyzing information about the sponsoring employer, the foreign national, and the proposed job;
- Facilitate drafting of the full-time permanent job description including title, duties, and requirements;
- Research, obtain, and analyze certified LCs in the job category for case strategy;
- Consider and advise on the foreign national's qualifications compared to the LC job requirements;
- Evaluate issues relating to the degree, job duties, experience, preferences, wage, and others;
- Discuss and update experience letters and/or credentials;
- Draft, finalize, file, and obtain the Prevailing Wage Determination (PWD);
- Monitor and advise about changes in law, procedure, trending issues, and processing times that might affect case processing.



5. What are the employer's responsibilities?

In order for this process to be successful, it requires collaboration from all involved.

The employer's responsibilities include:

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- Facilitate the assessment of the LC’s likelihood of success;
- Provide key information and assist in the full-time permanent job description including title, duties, requirements, and other details;
- Engage in the registrations for the PERM and SWA account process;
- Review the draft Prevailing Wage Determination (PWD) request for accuracy;
- Stay engaged and flexible during this unique process.

Please note that the employer is required by law to pay all costs and fees associated with the PERM labor certification stage. This includes attorney’s fees and the costs of any advertisements.

6. Is the employer required to register with the DOL for this process?

Yes. We guide and work with our clients through this process which can take from a few days to a few weeks.

PREVAILING WAGE DETERMINATION

7. What is the prevailing wage?

An employer must obtain a Prevailing Wage Determination (PWD) from the DOL before filing the LC. The prevailing wage is the wage (hourly or annually) determined by DOL based mostly on its own surveys and the position’s title, job description, requirements, and location. There are typically 4 levels. The PW must be paid by the employer to the foreign national when they receive the green card on the basis of the LC.

8. How do we obtain a Prevailing Wage Determination?

With the input of our clients, we analyze the position description and requirements and prepare and file the PWD request through an online account with the DOL National Prevailing Wage Center. The PW Request must include the job title, job description, area of intended employment, and the requirements for the job (i.e., the O*Net category, education level, years of experience, and other special requirements).

A concise and objective job description is essential to obtaining the most appropriate PWD. The job description should not include every duty or requirement for the position. The higher the requirements, the higher the prevailing wage.



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9. Can bonuses be included to meet DOL's Prevailing Wage?

Discretionary bonuses, commissions, and cost-of-living allowances can only be included if the payment is guaranteed, and must be paid on a weekly, bi-weekly, or monthly basis.

10. How long does it take for the DOL to issue the PWD?

The law does not provide for a mandatory time period for DOL to issue a PWD for LCA purposes. Currently, a "clean" PWD (without a Request for Information or "RFI") is taking 5-8 months for adjudication.

11. What can an employer do if it does not agree with the PW determination?

The employer can submit additional information to the DOL and request a reconsideration. However, in most cases, the DOL stands by its original determination. Often, it is necessary to reevaluate the requirements of the position and refile the PWD.

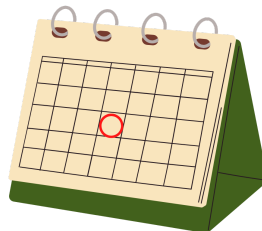
12. When must the employer pay the PW?

The employer must pay the PW when the foreign national receives the green card on the basis of the LC. The employer has to demonstrate that they had the ability to pay the offered wage from the time the LC was filed until the foreign national receives the green card.

13. What is the "Priority Date" and why is it important?

The date that the LC is filed with the DOL sets the Priority Date. This date is important because it places the foreign national "in line" for an immigrant visa.

The priority date determines when a foreign national can file for adjustment of status (AOS), the last step of the green card process. If the priority date is not current, the foreign national waits "in line" for the priority date to become current. For more information, see [FAQ - Visa Bulletin](#)



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POSITION REQUIREMENTS

14. How important is the job title, duties, and position requirements to this process?

These are critical components of the process and must be carefully determined. Failure to do so can prove fatal to the LC. The position description will define the level of the prevailing wage, the pool of potential applicants; address the technical DOL requirements; the preference category (EB-2 or EB-3), among others.

It is not permissible to tailor job requirements to the foreign national being sponsored. For example, including a foreign language requirement can be considered unduly restrictive and trigger an audit. Additionally, the LC position determination involves a difficult dance. It's important to develop the job position by visualizing the future - the position the sponsored employee might have at the time the green card is issued. This is a difficult dance because the time frame for green card issuance varies greatly depending on the employee's country of birth and the type of position he or she will perform.

15. How to determine whether a position qualifies for EB-2 or EB-3 immigrant preference categories?

The determination of whether the position qualifies for employment-based EB-2 or EB-3 is made by the employer based on business practices and reflected in the job description and LC.

- For an **EB-2** petition, the position must require at least a Master's Degree (or foreign equivalent) or a Bachelor's degree and five years of progressive experience (note experience gained with the sponsoring employer can't be used to account for the progressive work experience).
- For an **EB-3** petition, the position must require at least a Bachelor's degree.

16. Can an employer use the standard company job description for the PWD and LC?

Most standard company job descriptions will not meet the requirements of the DOL for LC purposes. DOL compares the job duties and requirements for the position with keywords, job duties, and requirements described in DOL's Occupational Outlook Handbook and the O*Net job summary.



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If the job description is inconsistent with the DOL's expectations, the employer might receive an audit to explain the differences and justify them based on business necessity.

17. Can special skills and requirements be used in the job description?

Special job requirements can be used to some extent. DOL might question job descriptions and position requirements that include extensive certifications and technical knowledge. If supervision is not a major part of the position, it is best not to include it as it skews the PWD.

Sporadic travel and conferences should not be included in the job description. A travel requirement might add a point to the PWD.

18. Does a part-time position qualify for LC?

No. The job offer must be for a permanent and full-time position. The PERM position is a future position that becomes active after the issuance of the green card.

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.

Subscribe to our [Newsletter](#) to stay informed and up-to-date with recent news and updates on corporate immigration and compliance.

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