

# FAQ: Special Handling Labor Certification (PERM)

## 1. What is Special Handling and how is it uniquely different from the traditional Labor Certification process?

Special Handling is a unique form of the Labor Certification (LC) process for colleges and universities to sponsor teachers and professors. It differs from the traditional LC process in some keyways:

- Candidate Selection: Colleges and universities can select the "best qualified" candidate, not just someone who is minimally qualified.
- Limited Alternative Recruitment: They have fewer requirements for alternative recruitment methods.
- Preferences in ads (e.g., "Ph.D. preferred") are considered requirements and should be avoided.

## 2. What is the Labor Certification (LC) Process?

The Labor Certification (LC) Form and Process is the method the government uses to certify the first step of the employment-based immigration process which is necessary for foreign nationals to apply to obtain a green card.

The process is driven by the employer and involves three main steps:

- 1) Prevailing Wage Determination
- 2) Recruitment
- 3) LC preparation and filing

## 3. What is PERM?

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

## 4. How to begin the PERM Special Handling Process

The first step involves communications and exchange of information and documents between the attorney, employer, and employee to establish a strategy and job details for the employee being sponsored. Initial details include job title, duties, education and experience requirements, job location, and other important factors.

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We determine if the original recruitment meets the required timing and DOL requirements to be re-used.

If it can't be re-used, we communicate and refine details of the position and review next steps which will include the prevailing wage determination request to the Department of Labor.

## 5. What does the Marks Gray Immigration Team do for clients during the Special Handling process?

Our team provides a range of services, including:

- Assessing the likelihood of LC approval by gathering and analyzing information about the employer, foreign national, and job.
- Helping define the full-time permanent job description, including title, duties, and requirements.
- Researching similar certified LCs for case strategy.
- Advising on the foreign national's qualifications versus LC job requirements, including degree, job duties, and prevailing wage.
- Guiding and finalizing experience letters and credentials.
- Drafting, filing, and obtaining the Prevailing Wage Determination (PWD).
- Assisting with SWA & PERM registration.
- Developing recruitment strategy and efforts.
- Determining if original recruitment can be re-used.
- Helping place ads and gather evidence of the process.
- Preparing notice requirements, recruitment summary letters, and qualification statements.
- Reviewing U.S. worker applications and reasons for potential rejection.
- Preparing, filing, and monitoring the LC application.
- Preparing a compliance file.
- Monitoring and advising on changes in law, procedure, and processing times.

## 6. What are the employer's responsibilities?

Successful Special Handling requires collaboration. The employer's responsibilities include:

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- Facilitating the assessment of LC success and defining the full-time job description.
- Providing evidence of the original recruitment and selection process.
- Assisting with recruitment and notice placement and gathering evidence of the process.
- Collecting and analyzing U.S. worker applications.
- Identifying selection committee members and conducting recruitment interviews.
- Determining the best-qualified candidate and providing selection process documentation.
- Reviewing and signing recruitment summary letters, qualification statements, job confirmation letters, and other related documents.
- Responding to emails from the DOL to confirm sponsorship.
- Collaborating to establish documentary evidence in case of an audit.

**Note:** Employers must pay all costs and fees associated with the PERM labor certification stage, including attorney's fees and advertisement costs.

## PREVAILING WAGE

### 7. What is the prevailing wage?

Before filing the Labor Certification (LC), employers must obtain a Prevailing Wage Determination (PWD) from the Department of Labor (DOL). This is the minimum wage set by the DOL based on collective bargaining agreements, surveys, job title, description, requirements, and location.

The employer must pay the employee the prevailing wage or higher when they become a Legal Permanent Resident. The employer must prove they can pay this wage from the time the LC is filed until the foreign national gets the green card.

A clear and concise job description helps in getting an appropriate PWD. Including too many duties or high requirements can increase the prevailing wage.

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For union positions, the DOL uses the collective bargaining agreement (CBA) wage. For nonunion positions, the DOL uses its wage survey data unless the employer provides an acceptable alternative survey.

## 8. How do we obtain a Prevailing Wage Determination?

We work with our clients to analyze the job description and requirements, then prepare and file the PWD request with the National Prevailing Wage Center.

## 9. How long does it take for the PWD to be issued?

There is no mandatory time for the DOL to issue a PWD. Currently, it takes about 5-8 months for a "clean" PWD (without a Request for Information or "RFI").

## 10. How important are defining the job title, duties, and position requirements to the PWD & PERM process?

These components are critical. A poorly defined job description can jeopardize the LC. The job description affects the pool of applicants, DOL requirements, preference category (EB-2 or EB-3), and prevailing wage level.

The job requirements should not be specifically tailored to the foreign national being sponsored. For example, adding a foreign language requirement can be seen as restrictive and trigger an audit.

General Guidelines:

- Employers can't require skills or experience gained by the candidate while working for the sponsoring employer.
- The job description must include classroom teaching duties.
- Avoid "preferred" qualifications.
- The position must be full-time (not part-time) and permanent. It is a future position that becomes active after the candidate receives the green card.
- The job description and ads must include the job title, teaching duties, minimum requirements, work location, employer name, and application submission method.
- Most standard company job descriptions will not meet the requirements of the DOL for LC purposes.

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## RECRUITMENT

### 11. How does recruitment work for Special Handling cases?

The special recruitment allows the employer to select the “more qualified applicant” (not the minimally qualified applicant, which is the standard for the traditional LC process).

The employer might be able to re-use the prior selection process if that selection occurred no more than 18 months before the LC application will be filed and followed the DOL requirements. The recommended approach is to use the date listed on the offer letter as the date of selection.

If the 18-month window has passed, or if the original ad does not conform to DOL regulations, a “re-selection” process must be undertaken. This involves placing a new journal advertisement and convening a selection committee to determine if the foreign national employee is the best-qualified candidate for the position.

### 12. What advertisements and notices are required for Special Handling Cases? What evidence of recruitment must be kept?

- One professional journal advertisement (generally the Chronicle of Higher Education), once in print, or for at least 30 calendar days online in a national professional journal. Evidence of this recruitment include screenshots of the posting online a few times during the posting, a receipt of payment for the 30-day or longer ad, or after-the-fact verification from the journal of the ad including posting dates or tear sheet is a print ad was used.
- A Notice of Job Opportunity given to the bargaining representative of the occupational classification for which certification is sought in the location(s) of intended employment or if no union, a 10-business day physical worksite posting within the 30-day and 180-day window prior to filing the PERM. Evidence of this recruitment is a copy of the letter and the PERM Application sent to the bargaining representative.
- Of note – special handling exempts the SWA job order, Sunday newspaper ads and the 180-day recruitment timeline applicable to traditional PERM.

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## 13. How do the preferences in the job description impact the candidate's selection?

Preferences listed in advertisements are considered "implicit requirements."

For example, if the job description includes "Ph.D. preferred" and the sponsored employee did not have a Ph.D. at the time of hire, the employee will not be considered the best qualified for the position and DOL will deny the LC.

## LC PREPARATION AND FILING

## 14. What is the last step in the Special Handling PERM process? How long does the process take?

The final step is submitting the PERM application, using Form 9089, to the Department of Labor (DOL). This must be done within 18 months of selecting the candidate, typically marked by the date on the job offer letter.

Currently, processing a PERM application takes about 12 months, but it could extend further, especially if your case is audited. While Special Handling cases, which are specific to teaching positions at universities and colleges, are less frequently audited, there's still a possibility of an audit occurring.

Overall, you should anticipate that completing the Labor Certification process, which includes steps from the initial application to potential DOL verifications, could take between 18 to 24 months.

## 15. Is the employer required to register with the DOL to file an LC?

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

## 16. What documentation is the employer required to keep for this process?

The employer is required to collect and maintain various documents as part of the LC process. We prepare a PERM "Compliance File" for our clients, which must be kept with the employer for a minimum of five (5) years after the LC application has been submitted.

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The Compliance File includes:

- A copy of the submitted PERM application (Form ETA 9089);
- Prevailing wage determination;
- Signed and dated Recruitment Summary and selection process;
- Copies of tear sheets for any print ads (if applicable);
- Copies of website printouts for internet postings (if applicable);
- Signed and dated internal posting notice or union notice;
- Signed and dated Statement of Qualifications for the Beneficiary;
- Copy of offer letter.

## LOOKING INTO THE FUTURE

### 17. What are the next steps after the PERM Special Handling application is certified?

The next step is to file an I-140 Immigrant Worker Petition with the U.S. Citizenship and Immigration Services (USCIS). This petition must be submitted within 180 days of receiving the PERM certification. The process for filing an I-140 is the same whether it's a traditional PERM or a Special Handling case.

We look forward to working with you in these processes!

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