

US Department of Labor, Office of Foreign Labor Certification Announces Temporary Changes to Labor Certification Procedures in Response to COVID-19

Article By:

Kelli L. Hayes

On March 20, 2020, in response to new challenges presented to employers by COVID-19, the Office of Foreign Labor Certification (OFLC) announced changes to policies that govern labor certification processes in connection with the hiring of foreign national employees. The OFLC operates within the U.S. Department of Labor's Employment and Training Administration and administers foreign labor certification processes for employers seeking to hire employees in permanent, H-1B, H-2A, H-2B, and D-1 positions.

On March 20, the Department of Labor (DOL) issued *COVID-19 Frequently Asked Questions, Round 1*. In its Frequently Asked Questions (FAQ), the DOL indicated the OFLC remains fully operational at this time, including the National Processing Centers, PERM system, and Foreign Labor Application Gateway (FLAG) system. It also indicated OFLC will continue to follow standard operating procedures by contacting employers and their authorized attorneys or agents via email, and where email addresses are not available, via U.S. mail.

OFLC indicated that because email and U.S. mail continue to remain reliable forms of communication, OFLC does not anticipate any significant disruptions in its communications with employers. However, should mail service be disrupted, OFLC indicated they will contact employers and their attorneys or authorized representatives to arrange for alternative delivery of correspondence. In light of COVID-19's effect on many business operations, the FAQ also provided contact information for employers and/or their authorized attorneys or agents to contact the applicable National Processing Center to update their contact information.

Of particular note, OFLC also indicated it will permit requests for extensions or make other reasonable accommodations for those impacted by COVID-19. Such accommodations include extensions for the inability to timely respond to requests for information or other correspondence regarding the processing of applications for prevailing wage determinations and labor certification, such as Requests for Information, Notices of Deficiency, and Notices of Audit Examination. Another accommodation is a 60-day extension for an Application for Permanent Labor Certification (Form ETA-9089) where delayed recruitment conducted in conjunction with the filing the Application started on or after Sept. 15, 2019. The Form ETA-9089 filing must now occur by May 12, 2020.

With respect to needing to move H-1B, H-1B1 and E-3 employees to work locations not intended at the time the Labor Condition Application (LCA) was submitted for processing, the OFLC states that existing federal regulations allow employers to move employees without needing to file new LCAs, provided the new worksite is within the same area of intended employment. The employer must also post notice, as set forth by existing regulations, but OFLC indicated that because employers may experience various service disruptions, the notice will be considered timely when placed as soon as practical and no later than 30 days after the worker begins work at the new worksite location.

OFLC also indicated requests for extensions of time related to appeals of OFLC actions should be directed to the presiding administrative or judicial authority.

A full copy of the FAQ can be found here: https://www.foreignlaborcert.doleta.gov/pdf/DOL-OFLC_COVID-19_FAQs_Round%201_03.20.2020.pdf

© 2025 Dinsmore & Shohl LLP. All rights reserved.

National Law Review, Volume X, Number 85

Source URL: <https://natlawreview.com/article/us-department-labor-office-foreign-labor-certification-announces-temporary-changes>