



## **Tools For PERM Case Management And List Of Audit Triggers For Form 9089 By Julie Pearl, Esq.**

### **About the Author**

**Julie Pearl** is Managing Attorney of Pearl Law Group, an immigration firm listed as the top woman-owned law firm in the San Francisco Area (*S.F. Business Times*, 9/03 – present) and ranked #210 on the Inc. 500 List of Fastest Growing Companies in America (*Inc. Magazine*, 10/02). In 2001, Julie and her husband co-founded the company that licenses the award-winning case management software, ImmigrationTracker. She is listed in The International Who's Who of Business Immigration Lawyers and was featured in the book *The Moral Advantage: How to Succeed in Business by Doing the Right Thing* (Stanford University Project on Good Work, 2004). She received a BA degree from Stanford University, an MPA from Harvard University, and a JD from the University of California's Hastings College of the Law.

## TOOLS FOR PERM CASE MANAGEMENT

What is meant by the term, “Case Management Tools?”

Generally speaking, this refers to systems for the following:

- outlining the steps for each case
- tracking each step and prompting the next one
- calendaring tasks and filings
- defining the required documents and information
- generating reports for corporate clients and a law firm’s internal use
- communicating with clients and staff on needed items or actions

At a minimum, tools specific to PERM include:

- A checklist or workflow sheet for PERM cases
- A shared calendaring system for critical dates on these cases
- PERM questionnaire for the employer’s part of the Form 9089
- PERM questionnaire for the employee’s part of the Form 9089
- Templates for the PERM documentation (e.g., recruitment report, company supporting letter regarding job requirements and any justifications indicated)

Why Use Electronic vs. Paper Management Systems?

The post-9/11 era has ushered in a whole new appreciation for computer technology at agencies overseeing immigration matters, including the Departments of Homeland Security, Labor and State (DHS, DOL and DOS, respectively). For instance, the DOL has a stated goal of making all practitioners use e-forms for PERM, which allows the DOL to digitally capture many details on the employers and individuals filing PERM cases. The DOL expects to use this data to help detect improper filings, including duplicate filings for identical cases.

As a matter of professional practice, *attorneys must have a complete record of every known detail that the government maintains on our immigration clients.* Preparing and electronically storing those forms exactly as submitted to the government agencies is the safest way to ensure an identical match between the attorney’s version and the agency’s version of the DOL Form 9089 used to file labor certification applications. The same is true for any other correspondence and documentation transmitted on the client’s behalf.

Even before the government went e-happy, many immigration law firms starting using software to manage cases, prepare forms and standard client letters through mail-merge of database fields, report case status

automatically to clients, and perform a range of other functions. The added benefits of electronic case management include:

- Automatic reminders for deadlines (e.g., 30 days to respond to an audit), expirations (for prevailing wage determinations), and calendaring other items (such as Sunday ads and other recruitment efforts). For a unified approach to warding of the “black hole” of missed steps, these reminders can be integrated with the calendaring features and “To Do” lists many people use in such programs as Microsoft Outlook, Access, or Excel.
- Efficient communication with clients and other legal team members. Rather than relying on a paper file that can only be on one desk at a time, electronic recording of case steps and notes helps other team members support or supervise cases. If case steps are pre-defined in a database, and thus easily entered with a keystroke or two, more details will be available for all to see. Reports on case progress and required tasks/items can be instantly generated for the law firm and clients alike.
- Reduction of data-entry time and errors through “single-entry” of data. The same fields (client name, address, process type, job title, filing date, etc.) can be entered once and used in several programs, including the firm’s email, word processing & billing applications.
  - Clients can enter details needed for the Form 9089 directly onto a law firm’s web-based questionnaires. Upon review and acceptance of the client questionnaire responses, the attorney or paralegal can push the details directly into the Form 9089.
  - Some software programs -- like ImmigrationTracker -- also offer integration with DOL forms, after the firm has prepared the case in its own style. This avoids your having to enter data on the DOL website and separately on the firm’s database.

Even firms that elect not to invest in the more comprehensive software solutions should have some electronic system for tracking the PERM steps and important dates, in a way that allows access to more than one member of the firm. For instance, most firms have a license to use Microsoft Excel and/or Access, or some other tool that allows for simple spreadsheet generation. These electronic spreadsheets can be stored on a shared drive for staff members, using the checklists shown below as guides for the spreadsheet fields.

## Checklists for Steps of the Case

The basic steps in PERM case preparation are as follows:

1. Obtain prevailing wage determination from the state workforce agency (SWA)
2. Complete recruitment efforts 30-180 days before filing
  - a. If non-professional position, post job order with SWA for 30 days and place two Sunday print ads
  - b. If professional position, perform the above, plus at least three additional recruitment steps
3. Assemble recruitment documentation and prepare report in case of an audit
4. Employer posts notice for 10 consecutive business days or provides notice to bargaining representative
5. Complete Form 9089 for client review and approval
6. File Form 9089 electronically or by mail (latter requires client signature)
7. Calendar expected approval date and notify client of approval once received
8. Additional steps will be necessary in the case of an audit (30 days to respond) or if the certifying officer orders supervised recruitment

In addition to the basic steps above, many half-steps and preparatory logistics inevitably form part of the workflow. For example, the first step in every case is “**Intake Date.**” This field is best defined as: the client’s expectation of when the firm should begin work on the case (e.g., the date of the client’s initial transmission of questionnaire data and requested supporting documents).

The next step is for the attorney or paralegal assigned to the case to review the client’s information and promptly notify the client of any missing items. More than one reminder or clarification is often needed for the client to transmit all required information. Once this is done, our firm likes to record “**All Docs/Info. Received**” from the client – shorthand for acknowledging that the ball is now in our firm’s court to complete case preparation. For customer service protocols and case process documentation, all of these steps should be noted in the client’s file.

Logical workflow for the whole PERM process is illustrated in this draft screenshot from our firm’s case management software (note that “EE” = Employee; “ER” = Employer):

National, Sample Foreign		Process Matter #		Close												
<b>Case Start / Preparation</b> Q'aires / Start Letter Recvd [01/19/2005] (initials) Intake Date [01/19/2005] by [DZ] Docs Check [01/19/2005] by [DZ] Docs / Info Needed Reminder Sent Reminder Sent All Docs/Info Received [01/19/2005] <b>Work up</b> <input type="checkbox"/> Layoff in Position in Last 6 months? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - date: Education Eval. Needed <input type="checkbox"/> Eval. Sent [01/22/2005] Eval. Received [01/26/2005] <b>Form - ETA - 9089 Draft</b> Sent to ER [01/22/2005] Received from ER [01/26/2005] Sent to EE Received from EE Send Final 9089 to ER		<b>Prior Employment / Experience</b> Verif Letter Req Sent [01/20/2005] Verif Letter Received [01/27/2005] Letters Details <b>Recruitment</b> Send ER Ad for Review [01/19/2005] Ad Approved by ER [01/21/2005] Send for Prevailing Wage [01/21/2005] Receive Prevailing Wage [01/22/2005] Send Recruitmt Instr. [01/22/2005] <input type="button" value="Track Recruitment Efforts"/> <b>Workplace Recruitment Notifications</b> Posting [01/27/2005] In-House Media [01/27/2005] <b>After Recruitment Started</b> Recruitmt Summ. Recvd [ ] / [ ] / [ ] Draft Recruitmt Report <b>Business / Language Necessity</b> Evidence Requested Evidence Recvd Evidence Details Job description shows less than 50% overlap in duties from prior to current position		<b>Filing</b> File 9089 Receipt Number Priority Date Filed 9089 for ER Signature Sent Received Filed 9089 for EE Signature Sent Received <b>Approval</b> Estimated Approval Approval Valid From EE / ER Notified <b>Audit</b> Audit Notice Date Audit Notice Recvd ER Notified of Audit Audit Response Deadline Response Sent to ER Resp Recvd from ER Response Sent to DOL <b>Supervised Recruitment Reqd?</b> <input type="checkbox"/>												
<b>Private Notes</b>		<b>Public Notes</b> - Visible Online <input checked="" type="checkbox"/> 01/20/05: Employee requested guidance re. verification letters. Primary previous employer is no longer in business.														
<table border="1"> <thead> <tr> <th>Date Due</th> <th>ToDo/Action Log</th> <th>Date Completed</th> <th>Responsible Party</th> </tr> </thead> <tbody> <tr> <td>02/02/2005</td> <td></td> <td></td> <td>Julie Pearl</td> </tr> <tr> <td><input type="checkbox"/> Completed</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Date Due	ToDo/Action Log	Date Completed	Responsible Party	02/02/2005			Julie Pearl	<input type="checkbox"/> Completed				Created 2/7/2005 10:38:27 AM		
Date Due	ToDo/Action Log	Date Completed	Responsible Party													
02/02/2005			Julie Pearl													
<input type="checkbox"/> Completed																

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The recruitment stage is so critical to PERM that it warrants its own checklists and quality assurance controls. To illustrate, following are two draft screenshots of the recruitment stage in ImmigrationTracker. These screens flow out of the section marked "Track Recruitment Efforts" on the main PERM process screen above.

# Recruitment Efforts - Screen Capture 1 of 2

PERM Recruitment Efforts

Standard Professional

Proposed Recruitment Filing Date:

	<u>Source</u>	<u>From</u>	<u>To</u>	Evidence / Tear Sheet Recvd
Posting	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ad 1	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ad 2 / Prof. Journal	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Job Order	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
In House Media	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Print Close

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**Recruitment Efforts - Screen Capture 2 of 2 (Extra Steps for Professional Positions)**

	<u>Details</u>	<u>From</u>	<u>To</u>	Evidence / Tear Sheet Recvd
<input type="checkbox"/> Job Fair				
<input type="checkbox"/> Employer Website				
<input type="checkbox"/> Other Job Website				
<input type="checkbox"/> On-campus Recruiting				
<input type="checkbox"/> Trade / Prof. Organization				
<input type="checkbox"/> Private Employment Firm				
<input type="checkbox"/> Employee Referral Program				
<input type="checkbox"/> Campus Placement (if no exp. req'd. only)				
<input type="checkbox"/> Local / Ethnic Newspaper				
<input type="checkbox"/> Radio / TV				

Print      Close

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Ideally, the firm's system will have further detail on the required documentation for each of these recruitment steps, such as the following:

<u>Recruitment Step</u>	<u>Documentation to be Stored</u>
SWA job order	Start and end dates of the job order placed on the application
Newspaper ads	Copy of the page in which the ad appeared
Employer website	Dated copies of the pages from the site showing the advertisement of the occupation stated in the PERM application
Job search website	Same as above
Placement firms	Copies of contracts and ads placed by the firm for the specific occupation, and/or other documentation that the firm conducted recruitment for the position in the PERM application
Employee referral program with incentives	Dated copies of employer's intra-company notices or memos describing the program and noting the incentives offered
On-campus recruiting	Copies of the notice issued by the institution's placement office, including the employer's name and the interview date(s)
Campus placement office	Copy of the employer's notice of job opportunity, as provided to the campus placement office
Job fairs	Brochures advertising the fair and/or any newspaper or other ads naming the employer as a participant in the job fair
Trade or Prof. Organizations	Copies of pages from trade journals or newsletters showing ads for the specific occupation
Local and ethnic newspapers	Copy of the page showing the ad in the newspaper
Radio and TV ads	Copy of the text of employer's ad, plus written confirmation from the radio or television station that the ad was aired.

## TIPS FOR FILLING OUT THE FORM ETA 9089

### LIST OF AUDIT TRIGGERS

ImmigrationTracker 7.0 includes PERM "Safety Net" features. Pop up box with the following text will appear whenever the answers shown below are selected on the Form 9089.

Text: Possible Audit Trigger!  
Please confirm this selection.

The 17 most likely "trigger" answers identified by DOL and AILA commentators as of 6-3-05 are as follows:

<b>A.1</b>	Are you seeking to utilize the filing date from a previously submitted Application for Alien Employment Certification (ETA 750)?	<b>Yes</b>
<b>C.9</b>	Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?	<b>Yes</b>
<b>H.4</b>	Education: minimum level required:	<b>Other</b>
<b>H.8</b>	Is there an alternative combination of education and experience that is acceptable?	<b>Yes</b>
<b>H.12</b>	Are the job opportunity's requirements normal for the occupation?	<b>No</b>
<b>H.13</b>	Is knowledge of a foreign language required to perform the job duties?	<b>Yes</b>
<b>H.15</b>	Does this application involve a job opportunity that includes a combination of occupations?	<b>Yes</b>
<b>H.17</b>	Does the job require the alien to live in the employer's premises?	<b>Yes</b>
<b>I.a.2-A</b>	Did you select the candidate using a competitive recruitment and selection process?	<b>No</b>
<b>I.a.2-B</b>	Did you use the basic recruitment process for professional occupations?	<b>No</b>
<b>I.e.23</b>	Has the employer received payment of any kind for the submission of the application?	<b>Yes</b>
<b>I.e.24</b>	Has the bargaining representative for workers in the occupation in which the alien will be employed been provided with notice of this filing at least 30 days but not more than 180 days before the date the application is filed?	<b>No</b>

<b>I.e.26</b>	Has the employer had a layoff in the area of intended employment in the occupation involved in this application or in a related occupation within the six months immediately preceding the filing of this application?	<b>Yes</b>
<b>I.e.26-A</b>	If yes, were the laid off U.S. workers notified and considered for the job opportunity for which certification is sought?	<b>No</b>
<b>J.18</b>	Does the alien have the experience as required for the requested job opportunity indicated in question H.6?	<b>No</b>
<b>J.21</b>	Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?	<b>Yes</b>
<b>J.22</b>	Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements for this position?	<b>Yes</b>