



SUPERVISED RECRUITMENT

Prepared for ILW.com

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1



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AUTHORITY FOR SUPERVISED RECRUITMENT

- If the Certifying Officer determines it **appropriate**, post-filing supervised recruitment may be required of the employer for the pending application or future applications pursuant to §656.20(b).
§656.21(a)
- A substantial failure by the employer to provide required documentation...may result in a determination by the CO pursuant to 656.24 to require the employer to conduct supervised recruitment under 656.21 in future filings...for up to 2 years.
§656.20(b)
- If the Certifying Officer determines the employer **substantially failed** to produce required documentation, or the documentation was **inadequate**, or determines a **material misrepresentation** was made with respect to the application, or if the Certifying Officer determines it appropriate for other reasons, the employer may be required to conduct supervised recruitment pursuant to §656.21 in future filings of labor certification applications for up to two years from the date of the Final Determination. **§656.24(f)**



START OF THE SUPERVISED RECRUITMENT PROCESS

- The employer will be notified by the DOL that the application has been selected for supervised recruitment.
- The employer will have 30 calendar days to supply a draft advertisement.
- The draft ad cannot have substantive deviations from the description as listed in Section H of the submitted 9089
- The employer may request one extension for good cause of the 30 days timeframe



ELEMENTS OF SUPERVISED RECRUITMENT

- Supervised recruitment shall consist of **advertising** for the job opportunity by placing an advertisement in a
 - **newspaper of general circulation or**
 - **in a professional, trade, or ethnic publication,**
 - **and any other measures required by the CO.**
- If placed in a newspaper of general circulation, the advertisement must be published for **3 consecutive days, one of which must be a Sunday**; or, if placed in a professional, trade, or ethnic publication, the advertisement must be published in the **next available published edition.**
- The advertisement must be approved by the Certifying Officer before publication, and the CO will direct where the advertisement is to be placed.



ELEMENTS OF ADVERTISING

- The employer must supply a draft advertisement to the CO for review and approval **within 30 days** of being notified that supervised recruitment is required. §656.21(b)(1)
- The advertisement must: §656.21(b)(2)
 - Direct applicants to send resumes or applications for the job opportunity to the CO for referral to the employer; §656.21(b)(2)(i)
 - Include an **identification number** and an address designated by the Certifying Officer; §656.21(b)(2)(ii)
 - Describe the job opportunity; §656.21(b)(2)(iii)
 - **Not contain** a wage rate lower than the prevailing wage rate; §656.21(b)(2)(iv)
 - Summarize the employer's minimum job requirements, which **can not exceed** any of the requirements entered on the application form by the employer; §656.21(b)(2)(v)
 - **Offer training** if the job opportunity is the type for which employers normally provide training; §656.21(b)(2)(vi) and
 - Offer wages, terms and conditions of employment no less favorable than those offered to the alien. §656.21(b)(2)(vii)



WAGE RATE

- If the employer wishes to state a wage range in the advertisement, the bottom of the range must not be lower than the prevailing wage or the wage being offered to the foreign worker named on the ETA Form 9089, **whichever is higher**.
- Where the employer includes a wage in its advertisement, the wage must be equal to or greater than the **current prevailing wage** for the job opportunity.
- Where necessary, the OFLC/ANPC will provide the employer with the new prevailing wage applicable to the job opportunity.
- If the employer chooses to use a source other than the Occupational Employment Statistics (OES) survey, the employer must provide an acceptable survey, as outlined in 20 CFR 656.40(g), to the Certifying Officer.



REVIEW OF ADVERTISING

- The CO may issue an Assessment/Correction Letter to the employer, identifying any changes/additions that must be made before recruitment can begin.
- Once the draft advertisement is approved, the Certifying Officer will send the employer a Recruitment Instructions letter identifying in what sources or publications, as well as when, the employer's advertisement(s) must be placed. The employer must not initiate recruitment for U.S. workers until it receives this letter.



TIMING OF ADVERTISING

- The advertisement shall be placed in accordance with the guidance provided by the CO. §656.21(c)(1)
- The employer will notify the CO when the advertisement will be placed. §656.21(c)(2)
- The employer's advertising will direct applicants to send resumes and or applications to an OFLC or ANPC post office box address as outlined in the Recruitment Instructions letter.
- The Certifying Officer will send all resumes and applications received in response to the employer's advertisement(s) along with a cover letter listing the resumes/applications to the employer's attorney or agent of record, if any, with a copy of the cover letter to the employer. If the employer is not represented by an attorney or agent, the resumes and or applications will be sent directly to the employer.



ADDITIONAL OR SUBSTITUTE RECRUITMENT

- The Certifying Officer may designate other appropriate sources of workers from which the employer must recruit for U.S. workers in addition to the advertising described in paragraph (b) of this section.

[§656.21\(d\)](#)

- DOL has a protocol for forwarding to the employer the newspaper in which the ads should be placed. When the DOL discovers that a newspaper no longer will place three day ads, the DOL ceases to require publication in that newspaper and will work with the employer or attorney/agent to find an alternative that comports to the regulation.

- Employers who are instructed to place an ad in a newspaper that then learn the newspaper will not place a three-day advertisement should contact the SR email helpdesk at SR.processing@dol.gov to be considered for alternative advertising options.



RECRUITMENT REPORT

Recruitment report. The employer must provide to the Certifying Officer a **signed, detailed written report** of the employer's supervised recruitment, signed by the employer or the employer's representative described in §656.10(b)(2)(ii), **within 30 days** of the Certifying Officer's request for such a report. §656.21(e)



TIMING OF REPORT – 30 DAYS

- The employer shall supply the CO with the required documentation or information within 30 days of the date of the request. If the employer does not do so, the CO shall deny the application. §656.21(e)
- The Certifying Officer in his or her discretion, for **good cause** shown, may provide **one extension** to any request for documentation or information. §656.21(g)



ELEMENTS OF RECRUITMENT REPORT

The recruitment report must:

- **Identify each recruitment source by name** and document that each recruitment source named was contacted. §656.21(e)(1)
 - This can include, for example, copies of letters to recruitment sources such as unions, trade associations, colleges and universities and any responses received to the employer's inquiries. Advertisements placed in newspapers, professional, trade, or ethnic publications can be documented by furnishing copies of the tear sheets of the pages of the publication in which the advertisements appeared, proof of publication furnished by the publication, or dated copies of the web pages if the advertisement appeared on the web as well as in the publication in which the advertisement appeared.
- **State the number of U.S. workers** who responded to the employer's recruitment. §656.21(e)(2)
- **State the names, addresses, and provide resumes** (other than those sent to the employer by the CO) of the U.S. workers who applied for the job opportunity, the number of workers interviewed, and the job title of the person who interviewed the workers. §656.21(e)(3)
- **Explain, with specificity**, the lawful job-related reason(s) for not hiring each U.S. worker who applied. §656.21(e)(4).



ABLE AND QUALIFIED WORKER FOR THE JOB OPPORTUNITY

- Rejection of one or more U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are **capable of acquiring the skills during a reasonable period of on-the-job training, is not a lawful job-related reason for rejecting the U.S. workers. §656.21(e)(4).**
- A U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.
- The DOL has been asking employers to explain any limitations on training the employer may have with regard to the particular position.



FAILURE TO ADHERE TO DEADLINES AND REQUIREMENTS

- All documentations required must be provided in full.
- Failure to adhere to any timeframe throughout the supervised recruitment process will result in a denial of the employer's application.
- A pattern or practice of failing to comply in the supervised recruitment process is a ground for debarment of an employer, attorney, agent, or any combination thereof from the permanent labor certification program for a reasonable period of **up to three** years.



WITHDRAWAL OF APPLICATION DURING SUPERVISED RECRUITMENT

- An employer may request withdrawal of an application undergoing supervised recruitment.
- Future application for the **same foreign worker as in the withdrawn application** will be subject to supervised recruitment pursuant to 20 CFR 656.21.
- Where the DOL determines it appropriate, **all other applications filed by the employer for any foreign worker or job opportunity** may also be subject to supervised recruitment.
- An employer that wishes to file a future application for the same foreign worker as in an application withdrawn while undergoing supervised recruitment must do so by completing the ETA Form 9089, **except Section I**, Recruitment Information, which will be completed after submission at the instruction of the CO, and must mail it to:

**U.S. Department of Labor
Employment and Training Administration
Foreign Labor Certification
National Processing Center
Harris Tower
233 Peachtree Street, Suite 410
Atlanta, Georgia 30333**



PATTERN AND PRACTICE FINDING

- Repeated requests to withdraw different applications undergoing supervised recruitment **will be carefully reviewed** and may evidence a pattern or practice of the employer's failure to comply with the supervised recruitment process, and may subject the employer to debarment from the permanent labor certification program for a reasonable period of no more **than three years** pursuant to 20 CFR 656.31(f)(1)(v).



STATISTICS

- As of February 19, 2011 from the program inception date, the breakdown for applications that underwent Supervised Recruitment is as follows:
 - Certified --- approx. 12%
 - Denied --- approx. 65%
 - Withdrawn --- approx. 23%

