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PREVAILING WAGE OUTLINE¹

Sources to guide practitioner to complete both the Prevailing Wage (PW) request form and the PERM application

- **Department of Labor's Policy Guidance of May 9, 2005 with Appendices:** Before the practitioner can/should complete his/her State's prevailing wage request form, he/she should refer to the Policy Guidance which provides step-by-step guidance for completing the Worksheet and obtaining the right wage level. The Policy Guidance provides the following:
 - **Appendix A:** OES Prevailing Wage Guidance;
 - **Appendix B:** Checklist to determine OES Wage Level;
 - **Appendix C:** Worksheet for Use in Determining OES Wage Level ("WS");
 - **Appendix D:** A List of Education and Training Categories for Professional Positions; and
 - **Appendix E:** SVP Guidance
- **Frequently Asked Questions (FAQ) of August 1, 2005**
- www.online.onetcenter.org
- www.flcdatabcenter.org

When preparing a Prevailing Wage Request, practitioners should follow the steps outlined and consider the issues raised below:

1. **Identify Employer's Requirements: Education, Experience, Skills, etc.**
2. **Identify the O*NET position and code that most closely matches the position description.**
 - **Enables you to get the 'appropriate' wage for PW and PERM purposes:** Depending on Occupational Code YOU (and the DOL) select, that will govern the wage employer will have to pay. **For example**, let's assume you seek certification for a senior 'engineer' with programming and project management duties to work in Philadelphia area:
 - Wage 3 level for Software Engineer (15-1031): \$76 K
 - Wage 3 level for Engineering manager (11-9041): \$111 K
 - Wage 3 level for Computer Programmer (15-1021): \$66 K

¹ Written by Jane W. Goldblum. Jane, who has limited since 1980 her practice to immigration, nationality and consular law and, especially employment-based immigration law, is listed in the June 2004 and in the June 2005 issue of Philadelphia Magazine as one of the top immigration attorneys in Pennsylvania (www.superlawyers.com) and is listed in the 2005 publication Best Lawyers in America as one of America's best immigration lawyers (www.bestlawyers.com).

- How do you obtain an Occupational Code?: Go to www.online.onetcenter.org and research the various occupations until you find O*Net occupation and code you deem appropriate

3. Research the Wage Levels of the relevant O*NET position and code.

a. What is the Importance of Obtaining the Appropriate OES WAGE LEVEL?

- i. **For PW purposes:** You want a wage that the Employer is willing and able to pay
- ii. **For PERM application purposes:** The ‘level’ can be especially important if alien acquired all his work experience with same employer and you NEED to distinguish his entry position from his current position.

- a. **Using different O*NET Codes:** when completing the PERM application, the practitioner should, when possible, list separately entry-level position (short order cook and the O*Net code for same) and current position (Head Chef and the O’Net code for same).

- b. If positions do not have different O*Net codes, then use Wage Level ‘descriptors’ in PERM Application (see below).

b. How do you obtain the appropriate OES Wage Level for Prevailing Wage Purposes? Refer to ‘descriptors’ in Policy Guidance as a way to justify particular level. In distinguishing positions in PERM Application, also use descriptors.

1. Level 1: Entry [**Descriptors:** works under supervision; performs routine tasks; receives specific instruction; is closely monitored; has basis understanding & limited exercise of judgment. Example: Intern]
2. Level 2: Qualified [**Descriptors:** performs moderately complex tasks that require limited judgment; has good understanding of job attained thru education or experience]
3. Level 3: Experienced [**Descriptors:** exercises judgment; has supervisory duties; experienced with sound understanding of occupation with special skills or knowledge. Example: Senior Programmer]
4. Level 4: Fully competent [**Descriptors:** work requires judgment and independent evaluation; uses advanced skills and diverse knowledge to solve unusual and complex problem. Usually work is (only) reviewed by senior management; managerial/supervisory responsibilities]

4. Describe the job duties and draft a detailed position description

a. Practitioners should refer to the O*NET Summary Report of the relevant O*NET position

b. **The Importance of referencing the O*NET SUMMARY REPORT:** The Practitioner should obtain a “Summary Report” for the occupation (via www.online.onetcenter.org/link/summary). This Summary Report contains the following information: Tasks, Tools & Technology, Knowledge, Skills, Abilities, Work Styles, **Job Zone**, Related Occupations, Wages & Employment. When drafting the occupational description in both the PW and PERM application, try to make consistent with the description in “tasks,” “tools & technology” and “work styles”. When drafting the occupation’s **requirements** (education, experience) make sure they are consistent with Job Zone (see below) and, thus, “normal”. Use the Summary Report to complete **Step 1** on the WS.

5. Refer to the Job Zone in the O*NET Summary Report, to be apprised of DOL’s parameters. These include the designated Job Zone (e.g. Job Zone 1, 2, 3, 4 or 5), required experience, SVP range and applicable education.

- a. **The Importance of the JOB ZONE:** The Practitioner should refer to the Occupation’s “Job Zone” when completing the PW Form and, later, the PERM application to ensure requirements are consistent and, yes, ‘normal’. An occupation is classified in Job Zones One through Five.

- By way of example, **Job Zone Four** (the Job Zone for many professional positions), contains the following information:

- i. **Title:** Job Zone Four: Considerable Preparation Needed
- ii. **Overall Experience:** A minimum of 2 to 4 years of work-related skill, knowledge or experience is needed for these occupations. For example, an accountant must complete 4 years of college and work for several years to be considered qualified
- iii. **Job Training:** Employees need several years of work-related experience, on-the-job training, and/or vocational training.
- iv. **Job Zone Examples:** Many of these occupations involve coordinating, supervising, managing, or training others. Examples include accountants, computer programmers, teachers, chemists...
- v. **Education:** Most of these occupations require a 4 year bachelor's degree, "but some do not".
- vi. **SVP Range 7.0 to less than 8.0.** This is interpreted to be over 2 years to perhaps as high as 10 years. See #6 below.

o **Other Job Zones**

- **Job Zone One**—little or no preparation needed (SVP below 4.0). Example: waiters
- **Job Zone Two**—some preparation needed (SVP Range: 4.0 to less than 6.0). Example: tellers
- **Job Zone Three**—medium preparation needed (SVP Range: 6.0 to less than 7.0). Example: legal secretaries
- **Job Zone Five**—extensive preparation needed (SVP Range: 8.0 and above). Example: aerospace engineers

- b. **The Importance of the Occupation's SVP:** All occupations are accorded an SVP (that signifies the 'normal' education & experience for the occupation). Note: however, SVP is different for determining Wage Level on Prevailing Wage **WS** (where **ONLY experience** is considered) and for determining if requirements are 'normal' for PERM application purposes (where both experience and education are considered).

i. **SVPS for skilled through highly professional positions:**

- a. **SVP 6:** over 1 year up to and including 2 years
- b. **SVP 7:** over 2 years up to and including 4 years
- c. **SVP 8:** over 4 years up to and including 10 years
- d. **SVP 9:** over 10 years

ii. Interpreting the SVP: How to equate education to years of experience:

- a. General Associate's (AA) degree 0 years
- b. Specific Associate's (AA) degree 2 years
- c. Baccalaureate (BA/BS) degree 2 years
- d. Master's (MS) degree 4 years
- e. Doctorate (PhD) degree 7 years (2+2+3)

6. **Identify the Appropriate Wage Level, using the "Worksheet for Use in Determining OES Wage Level (WS)."**

- o **Under Step 1, Requirements, a "1" is automatically placed under the Wage Level Result.**
- o **Under Step 2, Experience, Need SVP of the position (Refer to Appendix E) -** For occupations in Job Zones 2 through 5, if employer's experience requirement is:
 - At or below the level of experience and SVP range: enter "0"
 - In the low end of the experience and SVP range: enter "1"
 - In the high end of the experience and SVP range: enter "2"
 - Greater than the experience and SVP range: enter "3"

NOTE: Points should be added for the amount of experience only if the required work experience is above the starting point of the O*NET job zone range. **Years of required education should NOT be considered in Step 2.**

Importance of SVP: if Employer's requirements exceed SVP, Employer must indicate in its PERM Application at Item H.12 that the requirements are NOT normal for the occupation. Example: If Employer requires a Master's Degree and 3 years of experience for position that has SVP of 7; then, Employer's requirements [which equal "7 years" –4 years allocated to education and 3 years of experience] exceed the position's SVP.

a. **Under Step 3, Education, check the employer's degree requirement for this position with the Educational & Training CODES for PROFESSIONAL Occupations in Appendix D.**

- **Appendix D** lists professional occupations & gives each a code:
 - **Code ONE:** First Professional Degree
 - **Code TWO:** Doctoral Degree
 - **Code THREE:** Master's
 - **Code FOUR:** Work Experience PLUS Bachelor's or Higher Degree
 - **Code FIVE:** Bachelor's [completion of program requires at least 4 but not more than 5 years of academic work]
- **Per Policy Guidance** and referring to professional occupations (Appendix D):
 - If the education required is **equal to or less** than the usual education: no entry
 - If the education required is **more than the usual education** by one category: enter a 1;
 - If the education required is **more than the usual education by OVER one category**, enter a 2;

Example: If the occupation generally requires a Bachelor's degree and the employer's job offer requires a Master's degree, enter a 1; if the job offer requires a Ph.D., enter a 2.

For all other occupations, use the education level for what 'most of these occupations' require or 'these occupations usually require' described in the O*NET Job Zone for that occupation.

o **Under Step 4, determine if there are any special skills.**

If the specific skills required for the job are generally encompassed by the O*NET description for the position, no point should be added.

A foreign language requirement is considered a special skill, and thus a 1 should be entered.

o **Under Step 5, determine if there are supervisory duties.**

If the job requires the supervision of at least one employee, enter a 1. However, if supervision is a customary duty for the O*NET occupation (e.g., First-line Supervisors/Managers occupations), do not enter a 1.

7. **The importance of the PW Request submission:** by submitting, as this author recommends, both a PW Request Form and a ONE-Page attachment justifying the occupational code, wage level, wage and requirements---you have set up your PERM application for approval. Example of Attachment/Justification is attached.

EXAMPLE FOR COMPLETING THE WORK SHEET (Appendix C)

HYPOTHETICAL: Employer's requires Master's plus 3 years of experience for a Senior Programmer

O*NET Requirements: Job Zone Four-thus, SVP: 7<8 [2 to perhaps 10 yrs]; Education: most require bachelor's "but some do not"; Experience: minimum 2-4 years; Professional Code (Appendix D): Five (bachelor's)

- **Step 1: Determining Requirements.** First you review Employer's requirements (tasks, skills, etc) and compare with O*NET Summary Report (including Job Zone), Policy Guidance re Wage Levels, etc.
 - **When completing WS, no matter what requirements, automatically put 1**
 - So, why do we look at O*Net Summary Report and Job Zone? Basically, it is to help us complete PERM application to make sure consistent and to prove requirements are NORMAL.
- **Step 2: Determining EXPERIENCE.** Review Employer's 'experience' requirement and compare with JOB ZONE's SVP. **Remember you just look at experience (NOT education!) Yes, different standard for PW versus determining if requirements are 'normal' for PERM application purposes.**
 - Employer wants 3 years of experience for Senior Programmer
 - SVP for Programmer is 7 to less than 8 [interpreted: over 2 years to perhaps as high as 10 years]
 - Here, required experience of 3 years would be low end of SVP.
 - **Thus, on WS, enter a 1.**
- **Step 3: Determining EDUCATION.** First you determine Employer's requirements and THEN, if position is a PROFESSIONAL position (one that generally requires a bachelor's degree), you go to Guidance's **Appendix D**—which lists Education CODES by ONET code and gives a number (1-5)
 - The Employer is asking for a Master's Degree
 - Per Appendix D, the code for a Programmer is 5
 - The Guidance tells us that code 5 is USUALLY for bachelor degreed positions
 - Per Guidance, required education is 1 level **above** the USUAL education.
 - **Thus, on WS, enter a 1.**
- **Step 4: Determining if SPECIAL SKILLS.** Again look at guidance & FAQ
 - Here, Employer is NOT asking for anything 'special'
 - **Thus, on WS, enter a 0.**
- Step 5: Determining is **SUPERVISORY** duties
 - Here, Employer is NOT asking for supervisory duties that are outside the scope of the senior position
 - **Thus, on WS, enter a 0.**
- **Adding up points (R, Exp, Ed), you get Wage Level 3 (experienced)**
 - Compare what Employer wants versus 'descriptors' of Wage Level 3 per Policy Guidance, e.g., Experience with SOUND understanding of occupation; able to exercise judgment, may have supervisory duties; position can have title: 'senior'
 - Compare Employer's Wage with O'NET Wage
 - Employer's offer: \$62,000
 - Wage Level 3 for Computer Programmer (Philadelphia): \$66,000+

Addendum to Request for Prevailing Wage Determination

Describe FULLY the job duties to be performed and/or attach the job description

Oversees and manages projects making key decisions concerning coding, interfacing and methods for data acquisition. Analyzes client's technological requirements and independently designs and writes code to meet specific needs. Responsible for reflex paging-based data acquisition projects. Proficiency required with various Operating Systems and programming languages including: DOS, all Windows versions, QB, VB, C, C++, VC, 8X86 assembly. Experience required in image and gesture recognition and protocols including RS-232, SPI, TCP/IP. Codes complex recursive algorithms for near real time. Familiarity w/ A/D & D/A hardware required. Writes, tests, & maintains ASM Code for microprocessor-based real-time acquisition systems.

Indicate wage level of the Job and provide justification:

The wage level for the position of Senior Programmer should be classified as a **Wage Level 3** occupation within the O*Net classification for Computer Programmers (15-1021.00).

- Wage Level 3 matches the position of Senior Programmer as the position requires a sound understanding of the occupation.
- The Senior Programmer position requires three years of experience, commensurate with the level of proficiency needed with the various tasks associated with this job.
- In addition, the position warrants the ability to perform complex tasks and to exercise independent judgment
- This position requires a master's degree in Computer Science or a related field.

In addition, in utilizing the Appendix C: Worksheet for Use in Determining OES Wage Level, further evidence is provided that the position should be classified as a Wage Level 3 occupation.

- Automatic addition of 1 point for requirements.
- The three year experience requirement falls in the low range of the Job Zone and SVP range with what is normally associated with the position of Computer Programmers (15-1021.00) as indicated in the OES Wage Determination and O*NET description. (1 point)
- The educational requirement of a master's degree in computer science is one step above the bachelor's degree requirement set forth in Appendix D of the Department of Labor's Policy Guidance of May 9, 2005. (1 point)
- There are no special skills or foreign language requirements, nor are there licensure/certification requirements. (0 points)
- There are no supervisory duties associated with this position. (0 points).

Adding up these point totals according to the formula utilized in Appendix C, the position of Senior Programmer at falls squarely within Wage Level 3 of the O*Net category for Computer Programmers (15-1021.00) for prevailing wage purposes.