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February 21, 2014. New FAQ regarding notification and consideration of laid-off U.S. workers for PERM applications.

Asked Question (FAQ). This FAQ addresses how an employer is to demonstrate that it notified and considered laid-off U.S. workers for the job opportunity listed on the ETA Form 9089. To read the FAQ, please click [here](#) and scroll to the PERM / Recruitment Report subheading.

1. [How detailed does the recruitment report have to be with respect to the lawful, job-related reasons U.S. workers were rejected?](#)
2. [How does an employer demonstrate that it notified and considered laid-off U.S. workers for the job opportunity listed on the ETA Form 9089?](#)

1. **How detailed does the recruitment report have to be with respect to the lawful, job-related reasons U.S. workers were rejected?**

The employer must categorize the lawful job-related reasons for rejection of U.S. applicants and provide the number of U.S. applicants rejected in each category. The recruitment report does not have to identify the individual U.S. workers who applied for the job opportunity. NOTE: The Certifying Officer, after reviewing the employer's recruitment report, may request the U.S. workers' resumes or applications, sorted by the lawful job related reasons the workers were rejected.

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2. **How does an employer demonstrate that it notified and considered laid-off U.S. workers for the job opportunity listed on the ETA Form 9089?**

As one condition of obtaining PERM labor certification, an employer must provide notice to and consider for hiring U.S. workers laid off by the employer during the six months preceding the filing of the application. 20 CFR 656.17(k)(1). Such notice and consideration must be given to all employees laid off during this period who worked in the occupation in the area of intended employment for which certification is sought or who worked in a related occupation ("potentially qualified U.S. workers"). 20 CFR 656.17(k). A related occupation is any occupation that requires workers to perform a majority of the essential duties involved in the occupation for which certification is sought. 20 CFR 656.17(k)(2). An employer must maintain and, if requested, submit documentation establishing that it notified and considered all potentially qualified U.S. workers it laid off during the six months before filing the application. 20 CFR 656.17(a)(1), (3). The employer must include the results of its notification and consideration of these laid-off U.S. workers in its recruitment report. 20 CFR 656.17(g).

As a result of auditing employer compliance with the requirements relating to laid-off workers, OFLC has determined that many applicant employers are applying section 656.17(k) in a straightforward manner, i.e., contacting their laid-off workers who are potentially qualified for the job covered by the application at the time the employer begins inviting interested candidates to apply for the job (about the time a job order is placed or it is advertised in a newspaper) and considering for hire those laid-off workers that apply for the position. Some audits, however, have revealed noncompliance by some employers; these employers have construed section 656.17(k) to only require that they inform workers at the time of their layoff that the employer may have future positions for which the worker may have an interest and inviting the worker to monitor the employer's job postings and apply for such positions, rather than the employer taking it upon itself to notify and consider the laid-off workers, as required by the regulations.

This misapplication of the requirements established by section 656.17 will result in the denial of an application. OFLC is issuing this guidance to prevent other employers from following this approach in the mistaken belief that it satisfies the regulatory requirements.

Where a U.S. worker who is potentially qualified for the job opportunity has been laid off by an employer during the six months preceding the application, the employer must directly notify the worker of the job opportunity and consider the worker if he or she applies for the job. The employer must make a reasonable, good-faith effort to notify each of the potentially-qualified laid-off workers that a relevant job opening exists. Notification should be provided by mail, fax, or e-mail, using the last known contact information for each worker. The employer must provide each worker a full description of the specific job opportunity and must invite the worker to apply for the position for which he or she is potentially qualified.

At the time a worker is laid off, an employer should secure from the worker appropriate contact information to permit the required notification and consideration. The employer must inform the worker that it is his or her responsibility to apprise the employer of any change in the contact information. The employer may inform the worker that he or she may decline to receive or, upon the worker's later request, discontinue such notification. Where a worker declines to receive such notification, the employer will be deemed to have met its notification and consideration obligations. Where a worker requests that notification be discontinued, the employer will also be deemed to have satisfied its notification and consideration obligations for the remainder of the six-month period.

An employer who files multiple labor certifications can satisfy its responsibilities under the regulation by notifying each laid-off worker (in the manner chosen by the worker) not less frequently than once monthly that a list of current relevant job openings is maintained electronically on a website operated by the employer. Where an employer chooses this alternative, the website must list or allow the worker to easily search for all the relevant job openings. Where a list is used, job openings must be identified by title and location and provide a hyperlink through which the worker may obtain a detailed description of, and the minimum requirements for, each position and apply for the position if he or she so chooses.

Simply informing a laid-off worker to monitor the employer's website for future openings and inviting the worker, if interested, to apply for those openings, will not satisfy the employer's regulatory obligation to notify all of its potentially qualified laid-off U.S. workers of the job opportunity.

An employer must maintain documentation showing that it has met its notice and consideration requirements, including copies of all relevant letters, e-mails, faxes, web pages (including those listing details of the relevant job openings and applications by laid-off workers for those openings), and other contemporaneous documents that show when and how notice and consideration was given. In addition, an employer must obtain and maintain written documentation that a laid-off worker has declined to receive notices, requested discontinuation of the notices, or refused to give or update contact information.

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