

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION

COVID-19

Frequently Asked Questions

ROUND 1

March 20, 2020

The U.S. Department of Labor's (DOL) Office of Foreign Labor Certification (OFLC) remains fully operational during the federal government's maximum telework flexibilities operating status – including the National Processing Centers (NPCs), PERM System, and Foreign Labor Application Gateway (FLAG) System. OFLC continues to process and issue prevailing wage determinations and labor certifications that meet all statutory and regulatory requirements. If employers are unable to meet all statutory and regulatory requirements, OFLC will not grant labor certification for the application. These frequently asked questions address impacts to OFLC operations and employers.

1. How will OFLC NPCs communicate with employers and their authorized attorneys or agents affected by the COVID-19 pandemic?

Following standard operating procedures, OFLC will continue to contact employers and their authorized attorneys or agents primarily using email and - where email addresses are not available - will use U.S. mail. OFLC does not anticipate significant disruptions in its communications with employers and their authorized attorneys or agents in areas affected by the COVID-19 pandemic since email serves as a reliable form of communication to support the processing of applications for prevailing wage determinations and labor certification. Further, OFLC reminds stakeholders that email addresses used on applications must be the same as the email address regularly used by employers and, if applicable, their authorized attorneys or agents; specifically, the email address used to conduct their business operations and at which the employers and their authorized attorneys or agents are capable of sending and receiving electronic communications from OFLC related to the processing of applications.

If the U.S. Postal Service or other private courier services delay or discontinue delivery of U.S. mail to certain areas affected by the COVID-19 pandemic, OFLC's NPCs will not send correspondence to geographic areas where there is either no mail service or partial mail service, as shown on the [Service Alerts](#) page of the U.S. Postal Service website. Normally, when correspondence related to the processing of applications must be sent by U.S. mail, OFLC uses the mailing address for the employer and, if applicable, the authorized attorney or agent named on the application. If some geographic areas have no or partial U.S. mail delivery and no planned restoration date, OFLC will then contact employers and their authorized attorney or agent via email, if that information is disclosed on the application, to arrange for the delivery of correspondence using alternate delivery services or to a mailing address not affected by U.S. Postal Service delivery disruptions.

2. How should employers and/or their authorized attorneys or agents provide updated contact information to OFLC when their business operations are temporarily affected by the COVID-19 pandemic?

OFLC understands that some employers and/or their authorized attorneys or agents may take necessary precautions due to the COVID-19 pandemic, such as temporarily closing offices or requiring employees to telework, and will need to update their contact information to ensure receipt of correspondence related to an application. In these circumstances, employers and/or their authorized attorneys or agents should contact the applicable OFLC NPC using the following methods:

Prevailing Wage Programs: General questions related to the processing of applications for prevailing wage determination, requests for extensions in replying to Requests for Information and other official correspondence, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC National Prevailing Wage Center using the following contact methods:

- Online: For pending applications, please access your [Foreign Labor Application Gateway](#) (FLAG) System account and upload a change request or responsive document using the “Ad Hoc Document” function.
- Email: FLC.PWD@dol.gov
Include the phrase “PWD COVID-19” followed by the full case number in the email subject line.
- Phone: 202-693-8200
Please have the full case number ready for the OFLC helpdesk staff.

H-2A, H-2B, and CW-1 Temporary Visa Programs: General questions related to the processing of applications, requests for extensions in replying to audits and other official correspondence, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC Chicago NPC using the following contact methods:

- Online: For pending applications, please access your Foreign Labor Application Gateway (FLAG) system account and upload a change request or responsive document using the “Ad Hoc Document” function for the specific application.
- Email: TLC.Chicago@dol.gov
Include the phrase “COVID-19” followed by the full case number in the email subject line.
- Phone: 312-886-8000
Please have the full case number ready for the OFLC helpdesk staff.

H-1B, H-1B1, and E-3 Temporary Visa Programs: General questions related to the processing of applications, business verifications, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC Atlanta NPC using the following contact methods:

Email: LCA.Chicago@dol.gov
Include the phrase “COVID-19” followed by the full case number in the email subject line.

Phone: 404-893-0101
Please have the full case number ready for the OFLC helpdesk staff.

Permanent Labor Certification Program: General questions related to the processing of applications, requests for extensions related to audits and supervised recruitment instructions, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC Atlanta NPC using the following contact methods:

Online: For changes of address, phone number, or email address, etc. please access your [PERM system](#) account via the **Helpdesk Inquiry module** via the “My Account” tab or by modifying the ETA Form 9089.

Email: PLC.Atlanta@dol.gov
BE.RFI.Atlanta@dol.gov (Business Existence Registration extensions)
Include the phrase “COVID-19” followed by the full case number in the email subject line.

Phone: 404-893-0101
Please have the full case number ready for the OFLC helpdesk staff.

3. Will OFLC permit requests for extensions to deadlines or make other reasonable accommodations for employers and/or their authorized attorneys or agents impacted by the COVID-19 pandemic?

Yes. OFLC recognizes that the COVID-19 pandemic may have a significant impact on businesses and understands that some employers and/or their authorized attorneys or agents may not be able to timely respond to requests for information and other correspondence regarding the processing of applications for prevailing wage determinations and labor certification (e.g., Requests for Information, Notices of Deficiency, Notices of Audit Examination). Accordingly, OFLC will grant extensions of time and deadlines for employers and/or their authorized attorneys or agents affected by the COVID-19 pandemic, including for delays caused by the COVID-19 pandemic and those that occurred as a result of businesses preparing to adjust their normal operations due to the COVID-19 pandemic.

Prevailing Wage, H-2A, H-2B, CW-1, and Permanent Programs:

As set forth below, OFLC will make accommodations related to deadlines for employers and their authorized attorneys or agents to respond to the applicable OFLC NPC regarding the processing of applications for prevailing wage determinations and labor certification including requests for audit documentation, a response to a Notice of Deficiency, submissions of recruitment reports, business verification and sponsorship documentation, supervised recruitment, requests for reconsideration of a PWD, and any other request for information issued by OFLC containing due date deadlines.

For COVID-19: If the specific deadline falls within the period from March 13, 2020 through May 12, 2020, the employer's response or submission of information or documentation will be considered timely if received by the appropriate NPC no later than May 12, 2020.

Permanent Program – Filing Date Extensions:

Under 20 CFR 656.17(e), employers are required to begin their recruitment efforts no more than 180 days before filing an *Application for Permanent Labor Certification* (Form ETA-9089), and to complete most recruitment measures at least 30 days before filing. Due to service disruptions and other business operations temporarily affected by the COVID-19 pandemic, some employers may be prevented from completing these requirements within the 180-day time frame. Therefore, OFLC will accept recruitment completed within 60 days after the regulatory deadlines have passed to provide employers with sufficient time to complete the mandatory recruitment and file their PERM application; provided that the employer initiated its recruitment within the 180 days preceding the President's emergency declaration on March 13, 2020.

Important Note: Employers who have already completed the recruitment steps during the required 180-day timeframe should continue to file their application(s) under existing regulatory requirements.

For COVID-19: Delayed recruitment conducted in conjunction with the filing of an application for permanent labor certification must have started on or after September 15, 2019, and the filing must occur by May 12, 2020.

Administrative Review or Appeals:

Requests for extensions of time related to appeals of OFLC actions should **be directed** to the presiding administrative or judicial authority, including the Department's Office of Administrative Law Judges (OALJ) for appeals of agency denials of labor certifications, debarments, revocations, or other agency actions related to the labor certification. For more information concerning OALJ operations, please visit www.oalj.dol.gov/.

4. **I am an employer with an approved Labor Condition Application (LCA). Due to the impact of the COVID-19 pandemic, I may need to move workers on an H-1B, H-1B1, and/or E-3 visa to worksite locations unintended at the time I submitted the LCA for processing by OFLC. Do I need to file a new LCA if the worksites are located in the same area of intended employment? If not, what are my notice obligations for moving the workers to the new worksite locations?**

If an employer's H-1B employee is simply moving to a new job location within the same area of intended employment, a new LCA is not generally required. *See* 20 CFR 655.734. Therefore, provided there are no changes in the terms and conditions of employment that may affect the validity of the existing LCA, employers do not need to file a new LCA. Employers with an approved LCA may move workers to other worksite locations, which were unintended at the time of filing the LCA, ***without needing to file a new LCA***, provided that the worksite locations are within the same area of intended employment covered by the approved LCA. Under [20 CFR 655.734\(a\)\(2\)](#), the employer must provide either electronic or hard-copy notice at those worksite locations meeting the content requirements at [20 CFR 655.734\(a\)\(1\)](#) and for 10 calendar days total, unless direct notice is provided, such as an email notice. It is important to note that if the move includes a material change in the terms and conditions of employment, the employer may need to file an amended petition with USCIS.

Notice is required to be provided on or before the date any worker on an H-1B, H-1B1, or E-3 visa employed under the approved LCA begins work at the new worksite locations. Because OFLC acknowledges employers affected by the COVID-19 pandemic may experience various service disruptions, the notice will be considered timely when placed ***as soon as practical and no later than 30 calendar days after the worker begins work at the new worksite locations.***

Employers with an approved LCA may also move H-1B workers to unintended worksite locations outside of the area(s) of intended employment on the LCA using the short-term placement provisions. As required for all short-term placements, the employer's placement must meet the requirements of [20 CFR 655.735](#). The short-term placement provisions only apply to H-1B workers.

5. I intend to file a Labor Condition Application (LCA) for the H-1B, H-1B1, or E-3 program and I cannot provide a hard-copy notice of the LCA filing due to the COVID-19 pandemic. How do I provide notice of the LCA filing?

On or within 30 days before the date of an LCA filing, employers must provide notice of the LCA filing to its employees in the occupational classification in the area(s) of intended employment. Where a bargaining representative exists, the employer must provide notice of the LCA filing to the bargaining representative.

In the absence of a bargaining representative, the employer may provide hard-copy or electronic notice to its employees which must be available to employees for a total of 10 calendar days. The hard-copy notice must be posted in two conspicuous locations at each worksite (or place of employment). During this pandemic, and in general, employers should also be aware that the regulations allow employers to provide electronic notice of an LCA filing. For electronic notice, employers may use any means ordinarily used to communicate with its employees about job vacancies or promotion opportunities, including its website, electronic newsletter, intranet, or email. If employees are provided individual direct notice, such as by email, notification is only required once and does not have to be provided for 10 calendar days.

The notice must be readily available to the affected employees. The notice must also contain the required content and comply with the notice provisions of [20 CFR 655.734](#). The employer must document and retain evidence of the notice that it provided in its public access file in accordance with [20 CFR 655.760](#). Further, the employer must provide a copy of the certified LCA to the H-1B, H-1B1, or E-3 worker(s) no later than the date the nonimmigrant worker reports to work at the worksite location.

6. I am an employer seeking to submit an Application for Permanent Employment Certification (Form ETA-9089). Due to the impact of the COVID-19 pandemic, I may need to temporarily close my offices or shift business operations to partial or full-time telework. How will my decision affect the requirement to post the Notice of Filing (NOF) under the Department's regulations?

Under [20 CFR 656.10\(d\)](#), the NOF must be posted for at least 10 consecutive business days and completed at least 30 days before the date on which the employer submits the Form ETA-9089. While the NOF is not part of the required recruitment activities, in [20 CFR 656.10\(d\)\(3\)\(iv\)](#), it must be posted during the same period of time as the employer conducts its recruitment efforts; that is between 180 days and 30 days before filing the Form ETA-9089. Accordingly, similar to the accommodations for recruitment activities due to the COVID-19 pandemic, OFLC will also accept NOFs posted within 60 days after the deadlines have passed in order to provide sufficient time for employers to file their applications, provided that the employer initiated its recruitment within the 180 days preceding the President's emergency declaration on March 13, 2020.

7. Due to the impact of the COVID-19 pandemic, I no longer have a business need for the workers employed under the temporary labor certification I received. What do I do?

Employers who received temporary labor certification under the H-2A, H-2B, or CW-1 visa programs may request approval from the OFLC Chicago NPC Certifying Officer to terminate work under the job order and/or work contracts before the end date of work due to the impact of the COVID-19 pandemic. An employer may submit a request for “contract impossibility” to the Chicago NPC Certifying Officer using the following method:

Email: TLC.Chicago@dol.gov
Include the phrase “COVID-19” followed by the full case number in the email subject line.

Important Reminders:

- An employer continues to be responsible for its obligations under the work contract until receiving a favorable “contract impossibility” determination from the Certifying Officer.
- In the event that the Certifying Officer makes a finding of contract impossibility, the employer should document its efforts to comply with each aspect of the contract impossibility provision under the regulatory requirements applicable to the H-2A ([20 CFR 655.122\(o\)](#)), H-2B ([20 CFR 655.20\(g\)](#)), or CW-1 ([20 CFR 655.423\(g\)](#)) visa programs.

8. Due to the impact of the COVID-19 pandemic, my business has a critical need for H-2A workers to perform agricultural labor or services. However, I do not have sufficient time to prepare all required documentation in order to file a completed job order with the State Workforce Agency and H-2A application with OFLC within the regulatory filing timeframes. Can I file an emergency H-2A application with OFLC?

Yes. Under [20 CFR 655.134](#), the OFLC Certifying Officer may waive the time period for filing for employers who did not make use of temporary alien agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause, provided that the Certifying Officer has sufficient time to test the domestic labor market on an expedited basis to make the determinations required by [20 CFR 655.100](#). Good and substantial cause may include the substantial loss of U.S. workers due to weather-related activities or other reasons, unforeseen events affecting the work activities to be performed, pandemic health issues, or similar conditions. Therefore, for employers whose business operations are impacted by the COVID-19 pandemic, OFLC considers this situation to qualify as good and substantial cause and, if these employers are unable to meet the regulatory filing timeframes, they should request a waiver of the regulatory filing timeframe for this reason under [20 CFR 655.134](#).

An employer that requests a waiver of the regulatory filing timeframe must submit a statement describing the good and substantial cause necessitating the waiver request, a completed *Application for Temporary Employment Certification* (Form ETA-9142A and appendices), a completed *H-2A Agricultural Clearance Order* (Form ETA-790/790A and addendums), and all applicable documentation meeting the requirements of 20 CFR 655.130-133. See [20 CFR 655.134\(b\)](#). To ensure delivery of the highest quality customer service, OFLC strongly encourages all employers and their authorized attorneys or agents to electronically prepare and file emergency H-2A job orders and applications using the OFLC [FLAG](#) system.

9. Due to the impact of the COVID-19 pandemic, the Department of State recently announced that, effective March 18, 2020, the U.S. Embassy in Mexico City and all U.S. consulates in Mexico will cancel routine immigrant and nonimmigrant visa services. How does this announcement impact the processing of employer applications for H-2A and H-2B workers by the Department of Labor?

The Department understands the concern and remains committed to working with the U.S. Departments of Homeland Security (DHS) and State (DOS) to ensure the H-2A and H-2B programs function effectively during this challenging time. The Department's Office of Foreign Labor Certification (OFLC) and its electronic application filing and processing system (Foreign Labor Application Gateway) *remain open and continue to operate* to support the processing of employer applications for temporary labor certification.

Although the Department does not have a role in the admission or issuance of visas to foreign workers, we maintain an open line of communication with our DHS and DOS colleagues to closely monitor this situation. To obtain current information on the status of U.S. Consulates and visa processing times in Mexico, please visit the website for DOS's Mission Mexico at <https://mx.usembassy.gov/>.