



UNITED STATES DEPARTMENT OF LABOR

CW-1 Temporary Employment Certification

Common Issues and Filing Tips



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Terminology:

- **OFLC** - Office of Foreign Labor Certification
- **FLAG** - Foreign Labor Application Gateway (FLAG) System
- **Form ETA-9142C** – CW-1 Application for Temporary Employment Certification
- **CW-1 Application** - Form ETA-9142C, inclusive of other supporting or required documentation
- **JVA** - Job Vacancy Announcement
- **NOD** - Notice of Deficiency
- **PWD** – Prevailing Wage Determination
- **NOA** – Notice of Acceptance



Introduction:

The purpose of this webinar is to provide technical assistance and helpful tips for preparing the *CW-1 Application for Temporary Employment Certification* (Form ETA-9142C), the CW-1 Job Vacancy Announcement, and to cover some of the most pressing and common post-filing issues encountered.

OFLC has encountered CW-1 applications that commonly present either form deficiencies (including Recruitment Report content), or prepared with unnecessary, ambiguous, overbroad, or conflicting content.



Filing and Processing Tips

- CW-1 employers must complete all required fields in the CW-1 Application, and upload all required and relevant supporting documentation (e.g., Appendix B, job contractor agreement/contract, etc.) in OFLC's FLAG system.
- Do not use caps lock when completing forms.
- Do not respond to notices of deficiency with a vague request for OFLC to modify the Application. Responses should note the specific change requested and specific location on the Form ETA-9142C and/or Appendices.
- Do not provide expired forms or appendices.



Filing and Processing Tips

Application for Prevailing Wage Determination, Form ETA-9141C

- Identify the materials, tools, machines, vehicles (type, gross vehicle weight), when applicable to the offered job position
- Ensure all job duties are listed in item **E.a.5, *Job Duties***, of the ETA-9141C. Do not list additional duties in item **E.b.5, *Special Requirements***.
- Any listed requirements for the position should be related to the job duties.
 - Example: An employer lists “Must be able to cook” in **E.b.5, *Special Requirements***; however, the duties in **E.a.5, *Job Duties*** describe an Auto Mechanic position.



Review of Common Deficiencies

- Incomplete or Improperly Filed Form ETA-9142C
- Inconsistencies Within the JVA
- Inconsistencies Between the JVA and Form ETA-9142C
- Notice of Posting Deficiencies
- Recruitment Report Deficiencies



Incomplete or Improperly Filed ETA-9142C

- The job contractor failed to indicate contractor status, failed to provide a completed Form ETA-9142C Appendix A, or failed to disclose a contract or agreement with the employer-client.
- ★ A job contractor contracts services or labor on a temporary basis to one or more employer-clients. Contractors do not exercise substantial, direct day-to-day supervision and control in the performance of the services or labor to be performed other than hiring, paying, and releasing the workers.
- ★ The CW-1 Application must clearly identify the employer-client and the employment relationship, including the places of employment, must be signed by the employer-client, and may support only one contract or agreement for one employer-client. **§ 655.421**



Incomplete or Improperly Filed Form ETA-9142C

- Excessive education and/or experience - the education and/or experience requirements submitted in the application far exceed the normal requirements for the assigned occupation.
- ★ **TIP** - Each wage data year (July 1), OFLC publishes the latest prevailing wage data from the Occupational Employment and Wage Statistics (OEWS) survey, generated by the Bureau of Labor Statistics (BLS). Review the OFLC published lists, based on O*NET and BLS data, for education and experience to verify that the normal and accepted education level and months of required job experience for the assigned Occupation Code align with the employer's requirements in Section **E, Job Opportunity Information**, on the ETA-9142C.



Incomplete or Improperly Filed Form ETA-9142C

For example: Occupation Code 37-3011, Landscaping and Groundskeeping Workers is classified as Job Zone One, meaning no experience to 3 months experience is generally required to perform the job. The education level for 37-3011 is “None” no education.

- An Application indicating a Bachelor’s degree in field **E.b.8**, ***Education: minimum U.S. diploma/degree required***, would generate a NOD.
- An Application indicating 24 months in field **E.b.10**, ***Work Experience: number of months required***, would generate a NOD.



Incomplete or Improperly Filed Form ETA-9142C

- Requirements listed in **E.b.12, *Special Requirements***, must be specific and measurable/testable. **NOTE:** OFLC will consider job preferences to be job requirements.

Examples of **unacceptable ambiguous/subjective** requirements:

- Good moral character
- Good communication skills
- Honest and trustworthy
- Strong interpersonal skills
- Must be results oriented
- Exceptional organizational skills

- Requirements listed in **E.b.12, *Special Requirements*** must clearly relate to the occupation. Any listed requirements for the position that are not normal and unrelated to the occupation would generate a NOD.

★ **TIP** – Section **E.b.12** of the **ETA-9142C** must contain only requirements that are normal and accepted for the occupation.



Incomplete or Improperly Filed Form ETA-9142C

- **Recruitment Information, E.e.1**, missing specific days and hours for applicants to apply for the job opportunity.
- Missing recruitment information or inconsistent phone numbers in items **E.e.1** and/or **E.e.2**.

e. Recruitment Information	
1. Explain <u>how</u> prospective U.S. applicants may be considered for employment under this job opportunity, including verifiable methods of contacting the employer, and the days and hours applicants can apply for the job. *	
2. Telephone Number to Apply *	3. Email Address to Apply *
4. Website address (URL) to Apply *	



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Employers filing for new employment must file no more than 120 calendar days before the date of need. New applications filed outside of this timeframe will be rejected without review.
- Employers filing for employment extension must file no more than 180 calendar days before the date on which the CW-1 status expires. Applications filed for renewal of approved employment will be rejected without review if filed outside of this timeframe.



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- **A.1** indicates application is a **Renewal** but no permit renewal date is put in **A.2**

A. Nature of CW-1 Application

1. Type of Application (<i>choose only one</i>) *	<input type="checkbox"/> New employment	<input checked="" type="checkbox"/> Renewal of approved employment
2. CW-1 Permit Renewal: If "Renewal of approved employment" is marked in Question A.1, enter the date on which the CW-1 visa status of the nonimmigrant worker(s) will expire. §	[Redacted]	

TIP: If "Renewal is selected, the current expiration date must be entered in A.2.

- **A.1** indicates **New Employment**, but renewal date is entered in **A.2**



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- **A.3** indicates 'No' to long term workers, but the period of need exceeds one year. Non-long-term workers are limited to one year.

3. Long-Term Worker: Is the employer seeking to employ a long-term worker who was previously issued a CW-1 visa or otherwise granted CW-1 status, as defined in 20 CFR 655.402? *	<input type="checkbox"/> Yes <input type="checkbox"/> No
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2. Workers Needed *		Period of Intended Employment	
		3. Begin Date: * [Redacted]	4. End Date: * [Redacted]

End date limited to one year after **Begin date** when A.3 is 'No'

★ **TIP:** Do not repeat the start date for the end date.

Example:

- April 1, 2023- March 31, 2024 is one year.
- April 1, 2023 – April 1, 2024 is one year plus one day.



UNITED STATES DEPARTMENT OF LABOR

Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- SOC (O*NET/OEWS) Code and SOC (O*NET/OEWS) Occupational Title in **E.a.1** and **E.a.2** are inconsistent with those issued on PWD. These must match.

E. Job Opportunity Information

a. Occupational Classification and PWD

1. SOC Occupational Code *	2. SOC Occupation Title *
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F. Prevailing Wage Determination

FOR OFFICIAL GOVERNMENT USE ONLY	
1. PWD Tracking Number P 500-23364-599924	2. PW Receipt Date 12/30/2023
3. SOC Code: 51-2023	a. SOC Occupation Title: Electromechanical Equipment Assemblers



TIP: Use the O*NET/OEWS Occupational Code and Occupational Title that are assigned in the PWD by the NPWC, **F.3** and **F.3a.** of the 9141C



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Requirements in **E.b.8**, **E.b.9**, and/or **E.b.10** are not consistent with requirements listed in **E.b.12**

Example of Inconsistency

Anticipated days and hours of work per week [E.b.6]

Total Hours [E.b.6.a]	40	Monday [E.b.6.c]	8	Wednesday [E.b.6.e]	8	Friday [E.b.6.g]	8
Sunday [E.b.6.b]	0	Tuesday [E.b.6.d]	8	Thursday [E.b.6.f]	8	Saturday [E.b.6.h]	0

Hourly Work Schedule [E.b.7] 9:00 A.M. - 5:00 P.M.

Education [E.b.8]	High School/GED	Training Months [E.b.9]	3	Experience Months [E.b.10]	24	Supervise Others? [E.b.11]	No
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Special Requirements [E.b.12] Must be High School Graduate with at least 3 months of training or work-related experience. Have knowledge of principles and processes for providing customer and personal services including handling of large group of arrival and departure and must be able to understand and follow instructions and out task in order and willing to work under pressure with the specified number of rooms or duties assigned in every day; and has the ability of extent flexibility that includes bending, twisting and lifting, willing to work in flexible shifts, days, evenings, weekend and holidays. Applicants either US Citizens and CW-1 workers must provide school credentials, training and employment certificates.



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- **Employer-Provided Tools and Equipment, E.d.5**, indicates “N/A” when the job is one that typically uses tools or equipment.

5. Employer-Provided Tools and Equipment: Workers will be provided, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. *	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
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Many CW-1 jobs require the use of tools or equipment. **Common examples:** Auto Mechanic, Commercial Cleaner, Farm Worker, General Maintenance & Repair Worker, Binding and Finishing Worker.

§ 655.423(k) requires employer provide all tools, supplies, and equipment required to perform the job, without charge to the worker, and to indicate this in the ETA-9142C and JVA.



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Employer provides housing or transportation, but **E.d.2, *Daily Transportation***, or **E.d.6, *Board, Lodging, or Other Facilities***, indicates “N/A”
- Employer charges workers for housing, but **E.d.7, *Deductions from Pay***, does not specify the amount of the deduction from a worker’s pay and state that housing is optional, not mandatory.

7. **Deductions from Pay:** State all deduction(s) from pay and, if known, the amount(s). *
Insert deduction type and amount and specify housing is optional, not mandatory.



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Item **E.d.3, Overtime Available**, indicates “Yes”, but no OT wage is provided in **E.c.6a**

6. Basic Wage Rate Paid *		6a. Overtime Wage Rate Paid \$	
From: \$ <input type="text"/> . <input type="text"/> *	To: \$ <input type="text"/> . <input type="text"/>	From: \$ <input type="text"/> . <input type="text"/>	To: \$ <input type="text"/> . <input type="text"/>



TIP: If **E.d.3** indicates “Yes”, then **E.c.6a** must list an OT wage



3. Overtime Available: Overtime hours will be available to the worker under this job offer and payable for every hour worked at the rate disclosed in this application. *	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
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Incomplete or Improperly Filed Form ETA-9142C

Appendix C Attorney/Agent/Employer Declarations errors:

- Only one page of the Appendix C submitted.
- Section **A, *Attorney or Agent Declaration***, is filled out with employer point of contact information instead of agent or attorney information.
- Section **B, *Employer Declaration***, not signed by the employer.
- Signature date is not current
 - Example: Application filed on April 1, 2023, but Appendix A is signed and dated December 2022.
- If the employer is a job contractor, the employer-client must submit a separate Appendix C.



TIP: Appendix C must be printed, signed and dated by the employer (and employer-client, if applicable), then scanned and uploaded to the application as a PDF.



Inconsistencies within the JVA

Many submitted JVAs also show internal inconsistencies, such as:

- Education requirement in one section differs from education requirement listed in descriptive paragraphs.

Example: The job requires a Bachelor's degree, but the employer checks the box indicating a high school education is required and does not include the Bachelor's degree requirement in the job requirements free text field.

- Number of workers differ between the line item and the descriptive paragraphs.

TIP: Leave these items out of your descriptions and narratives.



Inconsistencies within the JVA

- Transportation marked “No”, but in the Comments section, employer explains that it provides transportation to worksite or that a company vehicle will be provided.
- Overtime marked “No”, but an Overtime Wage Rate is listed beneath it.
- OFLC has encountered applications where on the JVA employers are offering a new wage associated with the new year data while their submitted PWD was issued with the prior wage year data. The valid PWD connected to the application is the source for the wage, even when the wages are updated on July 1. The JVA must remain consistent with the PWD associated with the ETA-9142C application.
- The wage on the PWD is valid until the expiration date. Each prevailing wage determination issued by the NPWC has a validity period which can range from no less than 90 days and up to one year. The validity period of a PWD is the period between the determination date and the expiration date, as listed on the PWD, Form ETA-9141C.



Inconsistencies Between the JVA and ETA-9142C

Many applications are denied due to discrepancies between the ETA-9142C and the JVA. When running advertisement after a Notice of Acceptance is issued, employers must *ensure that all information in the JVA is consistent with the ETA-9142C*.

Examples of inconsistencies:

- Provisions such as transportation, tools, housing marked “Yes” on ETA-9142C but “None” on JVA, or vice versa.
- Inconsistent educational and/or experience requirements between ETA-9142C and JVA.
- Dates of Need inconsistent.
- Offered Wage & OT inconsistent.
 - **Note:** Another common deficiency is overtime wage written as \$1.5 on JVA instead of calculated dollar amount.
- Pay frequency inconsistent between ETA-9142C and JVA.
- Inconsistent experience requirements, training requirements, and special requirements (additional requirements on JVA not present on ETA-9142C, or vice versa).
- Inconsistent number of workers.
- Work hours inconsistent between ETA-9142C and JVA (35 vs 40 per week).



Inconsistencies Between the JVA and ETA-9142C

EXAMPLES:

<p>▪ 9142C: Tools provided</p> <p style="text-align: center;">↓</p> <p>Employer-Provided Tools and Equipment [E.d.5] Yes</p>	<p>• JVA: No Tools</p> <p style="text-align: center;">↓</p> <p>Required tools, supplies and Equipment to be provided (enter none, if none) none</p>								
<p>▪ 9142C: Frequency of pay is <u>bi-weekly</u>.</p> <p style="text-align: center;">↓</p> <p>Pay Range [E.c.7] Hour Frequency of Pay [E.c.8] Biweekly</p>	<p>• JVA: Frequency of pay is <u>bi-monthly</u></p> <p style="text-align: center;">↓</p> <table border="0"> <tr><td>Hours per Week</td><td>40</td></tr> <tr><td>Hours per Day</td><td>8</td></tr> <tr><td>Payment Frequency</td><td>BI MONTHLY</td></tr> <tr><td>Overtime Available</td><td>No</td></tr> </table>	Hours per Week	40	Hours per Day	8	Payment Frequency	BI MONTHLY	Overtime Available	No
Hours per Week	40								
Hours per Day	8								
Payment Frequency	BI MONTHLY								
Overtime Available	No								



Inconsistencies Between the JVA and ETA-9142C

EXAMPLES:

- 9142C High School/GED required
- Experience required is 24 months (two years).

↓

Education [E.b.8]	High School /GED	Training Months [E.b.9]	0
		Experience Months [E.b.10]	24

- JVA High School? No
- 1-2 years experience required *This means that one year is the minimum acceptable.

↓

High School Diploma Required?	No
Qualification Requirements:	1 TO 2 YEARS EXPERIENCE IN MECHANIC JOB ABLE TO USE PRECISION MEASURING INSTRUMENT, AND POWER MACHINE AND HAND TOOLS / DISASSEMBLE ENGINE AND OTHER MECHANICAL PARTS / ABLE TO TROUBLE SHOOT ENGINE AND MOTOR FOR VARIOUS VEHICLES.

★ Key takeaway: *Proofread the submission and ensure all information in the JVA and in the ETA-9142C is internally consistent within each document, and consistent between the two documents.*



Notice of Posting Deficiencies

- Employer fails to post the *CW-1 Application* in two conspicuous locations for 21 consecutive calendar days.
- Employer does not post the **Form ETA-9142C CW-1 Application**, but instead posts:
 - a 'help wanted' notice
 - A copy of the JVA or job advertisement
 - Unfiled version of the ETA-9142C

The regulations define *CW-1 Application* as the *Form ETA-9142C* and appendices, valid PWD, and all supporting documentation.



Common Issues in Recruitment Report

Most common issues:

- Contact information not provided for all applicants.
- Final disposition for all applicants not provided.
- Employer did not provide the specific dates of the postings and/or JVA posting.
- Employer did not clearly state that the Form ETA-9142C posting was displayed in two conspicuous locations.
- Missing statement regarding whether the employer had former U.S. employees to contact, and, if so, the final disposition of that contact.



Common Issues in Recruitment Report

Most common issues, continued.

- The means and dates of contacting former U.S. employees not provided when applicable.
- Contradictory information - employer states no applicants in the recruitment report but the JVA shows there were applicants.

★ **TIP:** Employers should review the instructions in the NOA and make sure their recruitment report includes all the required information.

★ **TIP:** Employers should ensure the information in the recruitment report is consistent with information in the employer's Form ETA-9142C and JVA.



End of the Presentation

THANK YOU