CW-1 Temporary Employment Certification

Common Issues and Filing Tips



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2 3/23/2022



Terminology:

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



Introduction:

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, FLC/E documents, job contractor agreement/contract, etc.) in OFLC's FLAG system.

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.



Review of Common Deficiencies

- ➤ Incomplete or Improperly Filed Form ETA-9142C
- Inconsistencies Between the JVA and Form ETA-9142C
- Inconsistencies Within the JVA
- Recruitment Report



Incomplete or Improperly Filed ETA-9142C

➤ Job Duties in Section E.b.5 should NOT be copied and pasted from O*Net, often including the statement "See more occupations related to this task".



NOTE: While use of the O*Net occupation description when applying for a PWD is acceptable, the O*Net occupation description is not specific enough for a worker to have a meaningful understanding of what the job will entail. Therefore, the job duties listed in E.b.5 must be specific to the position requested.



Incomplete or Improperly Filed Form ETA-9142C

➤ Excessive education and/or experience - the experience requirements submitted in the application far exceed the normal requirements for the assigned occupation.



TIP - Review O*NET to verify the months of required job experience for the assigned SOC code indicated at **E.b.10** on the **ETA-9142C** align with what is normal and accepted for the occupation.

For example: SOC code 37-3011, Landscaping and Groundskeeping Workers is classified as Job Zone One, meaning little or no experience is generally required to perform the job. An application indicating 24 months in field **E.b.10** would generate a NOD requiring either the employer to explain the business necessity of the excessive experience requirement or deletion of the excessive experience requirement.

*Note: Preferences are deemed as requirements



Incomplete or Improperly Filed Form ETA-9142C

> Requirements listed in E.b.12 must be specific and measurable/testable.

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 must clearly relate to the occupation.
- TIP All special requirements indicated in field E.b.12 of the ETA-9142C must be normal and accepted for the occupation or contain a clear and detailed description justifying their necessity.



Incomplete or Improperly Filed Form ETA-9142C

> Worksite does not show a physical location or has an incomplete address.

c. Place of Employment and Wage Information

Worksite Address P.O. Box 520324

[E.c.1-5] Tinian, Northern Mariana Islands 96952



TIP: If no street address is available, use a physical description or intersection to describe the worksite location.



Incomplete or Improperly Filed Form ETA-9142C

Pocruitment Information

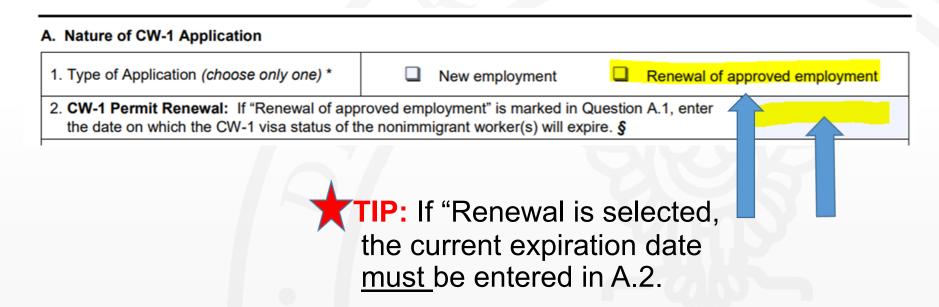
- ➤ Recruitment Information [E.e.1] missing specific "days and hours" for applicants to apply for the job opportunity.
- Missing recruitment info or inconsistent phone numbers in recruitment info section [E.e.1, E.e.2].

o. Reoraliment information	
Explain how prospective U.S. applicants may be considered methods of contacting the employer, and the days are detailed.	sidered for employment under this job opportunity, including verifiable d 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

> A.1 indicates application is a Renewal but no permit renewal date is put 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.

	Torker: Is the employer seeking to employ a long-term visa or otherwise granted CW-1 status, as defined in		No		
Period of Intended Employment					
2. Workers Needed *	3. Begin Date: *	4. End Date: *			

*

TIP: Do not repeat same date as end date as start date.

Example:

- > April 1, 2022- March 31, 2023 is one year.
- > April 1, 2022 April 1, 2023 is one year plus one day.

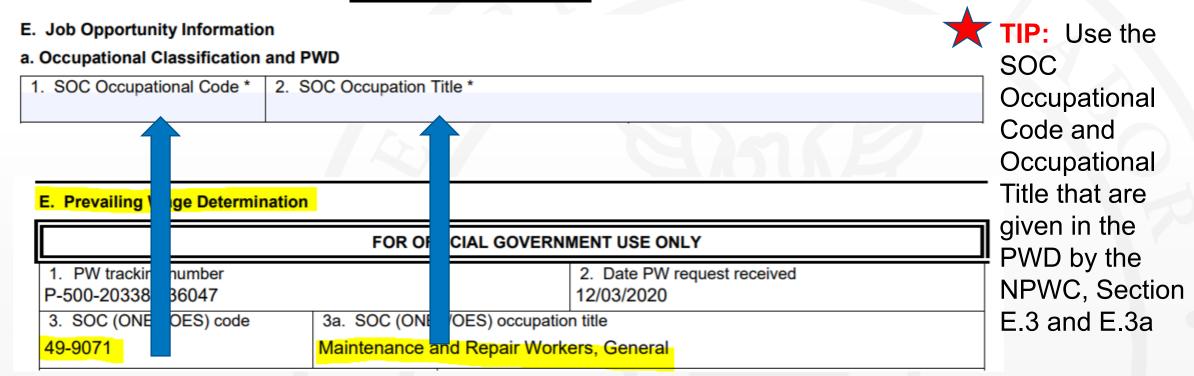
End date limited to one year after Begin date when A.3 is 'No'





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

➤ SOC code and SOC Occupational Title in E.a.1 and E.a.2 are inconsistent with those issued on PWD. These must match.





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

sticinated days and house of work now wook (E.b. 6)

nticipated days and h	ours of work per week [E.b.6]			
「otal 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]	Experience Months 24 [E.b.10]	Supervise Others? No [E.b.11]
Requirements [E.b.12]	handling of large group of arrival a rooms or duties assigned in every	and departure and must be able to understand and f	rience. Have knowledge of principles and processes for profollow instructions and out task in order and willing to worldes bending, twisting and lifting, willing to work in flexibleing and employment certificates.	rk under pressure with the specified number of



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.
 - 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. *

Examples: Auto Mechanic, Commercial Cleaner, Farm Worker, General Maintenance & Repair Worker, Binding and Finishing Worker.

655.423(k): (k) *Employer-provided items*. The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.





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

> Section E.d.3 indicates "Yes", but no OT wage is provided in E.c.6a

			_				
6. Basic Wage Rate Paid *		6a. Overtime Wage F	Rate Paid §				
From: \$ * To: \$		From: \$	To:	\$			
TIP: If E.d.3 indicates "Yes", then E.c.6a must list an OT wage							
 Overtime Available: Overtime hours will be for every hour worked at the rate disclosed 		_	ffer and payable	☐ Yes ☐	N/A		
		·		·			



Incomplete or Improperly Filed Form ETA-9142C

Appendix C errors:

- > Only one page of the Appendix C submitted.
- Section A filled out with employer point of contact information instead of agent or attorney information.
- Section B not signed by the employer.
- > Signature date is not current
 - Example: Application filed on April 1, 2022, but Appendix A is signed and dated December 2021.
- TIP: Appendix C must be printed, signed and dated by the employer, then scanned and uploaded to the application as a PDF.



Inconsistencies Between the JVA and ETA-9142C

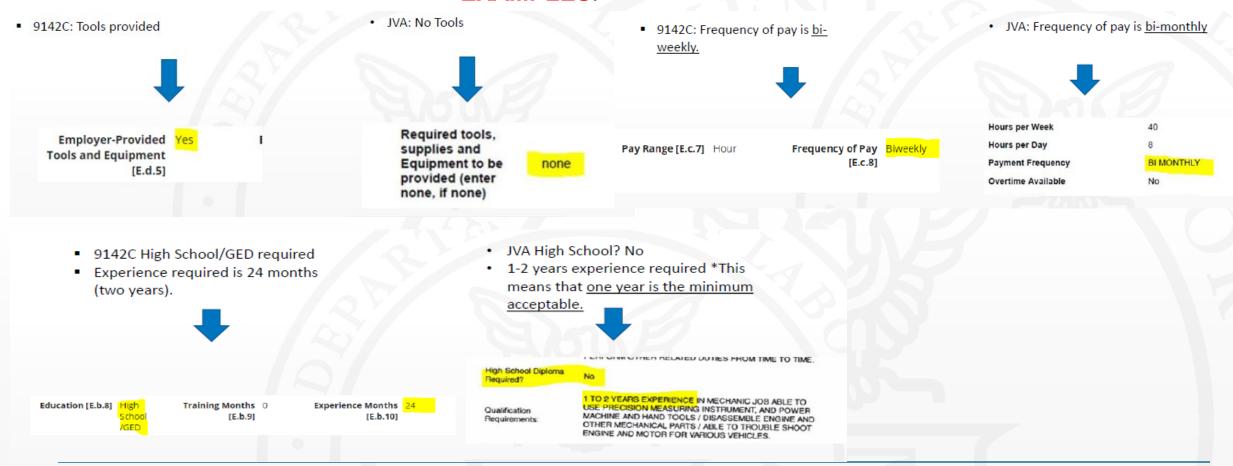
Many applications are denied due to discrepancies between the 9142C and the JVA. When running advertisement after a Notice of Acceptance is issued, employers must ensure that all information in the JVA is consistent with the 9142C.

- ➤ Provisions such as transportation, tools, housing marked "Yes" on 9142 but "None" on JVA, or vice versa.
- ➤ Inconsistent educational and/or experience requirements between 9142 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 dollar amount.
- > Pay frequency inconsistent between 9142C and JVA.
- Inconsistent experience requirements, training requirements, and special requirements (additional requirements on JVA not present on 9142, or vice versa).
- Inconsistent number of workers.
- ➤ Work hours inconsistent between 9142C and JVA (35 vs 40 per week).



Inconsistencies Between the JVA and ETA-9142C

EXAMPLES





Inconsistencies within the JVA

Many submitted JVAs also show internal inconsistencies. The following are common discrepancies:

- ➤ Education requirement in one section differs from education requirement listed in descriptive paragraphs.
- Number of workers differ between the line item and the descriptive paragraphs. TIP: Leave these items out of your descriptions and narratives.
- ➤ Transportation will say "No", but in the Comments section, employer explains that it provides transportation to worksite or that a company vehicle will be provided.
- > Overtime says "No", but an Overtime Wage Rate is listed beneath it.

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.



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 posting was up in two conspicuous locations.
- Missing statement regarding whether or not the employer had former employees to contact, and, if so, the final disposition of that contact.
- > The means and dates of contacting former 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.



Common Issues in Recruitment Reports

➤ Many employers submit photos of their postings with their recruitment report. Sometimes these photos show that the actual Form ETA-9142C was not posted, but instead a 'help wanted' notice was posted.

CW-1 regulations require that the <u>actual Form ETA-9142C</u> be posted in <u>two</u> <u>conspicuous locations</u>.



End of the Presentation

THANK YOU