



# CW-1 Temporary Labor Certification Program

## Filing Process Best Practices

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Office of Foreign Labor Certification  
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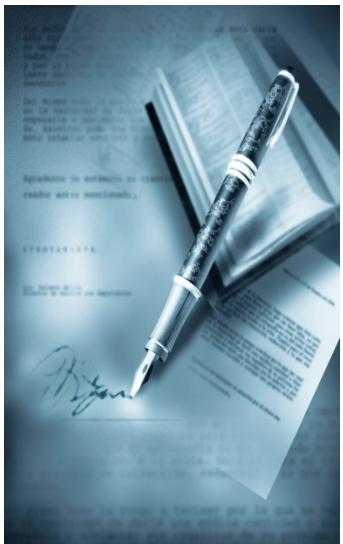


# Glossary of Terms

- BLS – Bureau of Labor Statistics
- CDR – Center Director Review
- CNMI – Commonwealth of the Northern Mariana Islands
- CNPC – Chicago National Processing Center
- DOL – Department of Labor
- ETA-9142C – CW-1 Application for Temporary Labor Certification
- ETA-9141C – CW-1 Application for Prevailing Wage Determination
- FLAG – Foreign Labor Access Gateway
- Governor – Governor of the CNMI
- JVA – Job Vacancy Announcement
- NOA – Notice of Acceptance
- NOD – Notice of Deficiencies
- NPWC – National Prevailing Wage Center
- OES – Occupational Employment Statistics
- OFLC – Office of Foreign Labor Certification
- PW – Prevailing Wage
- PWD – Prevailing Wage Determination
- SOC Code – Standard Occupational Classification Code
- TLC – Temporary Labor Certification
- TLC Application – Temporary Labor Certification Application
- Workforce Act – Northern Mariana Islands U.S. Workforce Act of 2018

# CW-1 Applications

## Filing Process Best Practices



## Section I

### Filing Process: Common Issues and Best Practices

# CW-1 Temporary Labor Certification

## Common Issues – Form Completion and Submission



- **Incomplete or Improperly Filed Form ETA-9142C** (e.g., missing fields, typos, etc.)
  - **TIP** – Ensure all fields are complete. FLAG will give you reminders about mandatory blank fields before submitting the application. **Typos cannot be amended** once the application is submitted.
- **Missing Physical Address**
  - **TIP** – The application must include a physical address for the employer.
- **Mismatched Information**
  - Details about the job offer provided in form ETA-9142C and those provided in the electronic job order posting are inconsistent.
  - **TIP** – Compare form ETA-9142C and the electronic job order posting to make sure all the job information is identical.
  - The term “Job Vacancy Announcement” relates to the pre-TLC process for the CW-1 process; Job Vacancy Announcements have been replaced by the recruitment provisions in DOL’s Interim Final Rule.
  - Form ETA-9142C being posted in two locations as part of recruitment efforts. The content in the form is used to inform interested workers regarding the details of the job.
- **Expired PWD**
  - Ensure the PWD included in the application is **valid and unexpired**. A PWD is valid between 90 days and one year.

# CW-1 Temporary Labor Certification Filing Tips



- Applications (forms ETA-9141C and ETA-9142C) will be submitted and processed through the FLAG system at <https://flag.dol.gov/>. Employers and attorneys/agents must create FLAG accounts.
- Employers must file electronically unless the employer is unable to do so due to lack of internet access or physical disability. Any mailed application must include a statement indicating the need to file by mail. Mailed applications that do not include the statement will be returned without review.
- The official submission date for **mailed in** applications will be the date OFLC staff completes data entry of the application.
- Submit each required or supporting document once. All documents are electronically stored in FLAG. Before the application is submitted, the filer should review the application documents table to ensure all documents have been uploaded.
- After submission, always check for a submission confirmation email from FLAG.

# CW-1 Temporary Labor Certification

## Common Issues – Form Completion and Submission



**NOTE** – All communications between OFLC and employers will be conducted electronically. In order to receive emails and other electronic communication from OFLC, employers must configure their email settings to receive emails from the FLAG system.

Please ensure that emails from FLAG/OFLC are not automatically directed to clutter or spam folders.

# Prevailing Wage Do's and Don'ts



## Section II

### Prevailing Wage Do's and Don'ts



# Prevailing Wage Do's and Don'ts

- **Validity of a CW-1 PWD**
  - Employers must have a **valid PWD** at the time a TLC application is filed.
  - TLC applications must be filed during the validity period of the PWD.
  - **TIP** – The validity period of the PWD **is not** the same as the validity period of the Governor's survey.
- **Request PWDs Between 60-90 Days Before It Is Needed**
  - While OFLC strives to process CW-1 prevailing wage requests expeditiously, **employers are encouraged to request a PWD early** in case of unexpected complications, such as an appeal.



# Prevailing Wage Do's and Don'ts

- **Employer's Suggested SOC** – Some employers believe that their suggested SOC code is what the NPWC must accept and assign and are filing appeals when NPWC assigns an SOC code other than that which is suggested.
  - The suggested SOC code is just that, a suggestion. The NPWC analyzes the job duties to determine the most accurate SOC code. The NPWC is not bound by the employer's suggested SOC code; it may assign a different SOC code based on its analysis of the job duties.



# Prevailing Wage Do's and Don'ts

- **CDR versus Correction** – Employers are unclear about the difference between a CDR and a Correction request. The NPWC received several CDR requests where employers were asking for a correction because their suggested SOC code was not what NPWC assigned to their job duties. The NPWC has seen a CDR request from an employer that wanted to change the job description. Neither situation is an example of a valid CDR request.
  - **TIP** – Request a **CDR** when there is a disagreement with the NPWC determination of the SOC code assigned as compared to the employer's job duties. Explain why the job duties are a better match with a different SOC code than the one assigned.
  - **TIP** – Request a **Correction** when there is technical error (e.g., the wage value assigned does not match the wage for the assigned SOC code as specified in the CW-1 Prevailing Wage Table on the CW-1 page of the OFLC website).
  - **TIP** – A change to the job duties or requirement necessitates the filing of a new PWD request. Employers cannot make changes to the job description once the PWD has been submitted.



# Prevailing Wage Do's and Don'ts

- **Appealing the SOC vs. Appealing the Wage Assigned**
  - **TIP** – An employer may **appeal** the SOC code assigned by the NPWC; an employer **cannot appeal the wage source assigned** as the wage source is defined by statute and regulation for the CW-1 program.
  - **TIP** – Check out “Round 1: 2019 CW-1 Interim Final Rule Implementation FAQs” at [https://www.foreignlaborcert.dol.gov/pdf/Round\\_1\\_CNMI-IFR-FAQs.pdf](https://www.foreignlaborcert.dol.gov/pdf/Round_1_CNMI-IFR-FAQs.pdf)
- **Where to File a CDR** – There is confusion by some employers about where and how to submit the CDR request.
  - **TIP** – A CDR must be submitted via email at [FLC.PWD@dol.gov](mailto:FLC.PWD@dol.gov). See the “CNMI IFR Fact Sheet,” under “Questions” at [https://www.foreignlaborcert.dol.gov/pdf/CNMI\\_IFR\\_Factsheet.pdf](https://www.foreignlaborcert.dol.gov/pdf/CNMI_IFR_Factsheet.pdf)



# Prevailing Wage Do's and Don'ts

- **What wage must I pay a CW-1 worker?**
  - Employers must **offer and pay** a wage that equals or exceeds the highest of the prevailing wage, the federal minimum wage, or the CNMI minimum wage.
  - As provided in the Workforce Act, the prevailing wage will be the mean hourly wage for the assigned occupation in the CNMI, as determined by an occupational wage survey annually conducted by the Governor.
  - In the absence of a survey, the prevailing wage will be the arithmetic mean wage of workers similarly employed in the territory of Guam, based on the OES Survey conducted by the Department's BLS.
  - Under the Interim Final Rule, if wage data is not available from the Governor's survey or the OES survey for Guam, the Department will base the prevailing wage on an adjusted national OES wage for the job classification.

# CW-1 Applications

## Filing Process Best Practices



## **Section III**

### **Common Reasons for Denied Applications**



# Common Reasons for Denied Applications

- **Non-Response to Notices of Deficiency (NOD)** – Employers should be aware the required response time for a NOD is 10 business days.
  - **TIP** – Check the due date stated in the NOD and respond as soon as possible to avoid a denial and/or missing the opportunity to appeal.
- **Job 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-9141C** 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.



# Common Reasons for Denied Applications

- **Education Requirements exceeding O\*NET zones for job opportunity**
  - **TIP** – All employers (including agents/ attorneys) should review O\*NET to verify the education level indicated at **E.b.8** on the **ETA-9142C** is normal and accepted for the assigned SOC code.

For example, SOC code 37-3011, Landscaping and Groundskeeping Workers is classified as Job Zone One indicating little or no formal education is required to perform the job. A TLC application requiring a university degree in field **E.b.8** would generate a NOD requiring the employer to either justify the business necessity of the degree or delete the degree requirement.
- **Unclear Special Requirements** – Some applications did not clearly explain special requirements, such as why a professional certification is needed for the position.
  - **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.



# Common Reasons for Denied Applications

- **Incorrect Appendices** – Appendices have been submitted with incorrect or unclear entries. For example, submissions of Appendix C indicating an agent or attorney represents the employer, but no agent or attorney information is provided on the Appendix.
  - **TIP** – Review all appendices for accuracy before submission.
  - Appendices should **only** be submitted if they are relevant to a specific application. For example, if the employer is not using an agent or attorney to prepare form ETA-9142C, Part A of Appendix C must not be completed.
- **Wage Offer is Less Than the Prevailing Wage** – The wage offer must equal or exceed the highest of the prevailing wage, the federal minimum wage, or the minimum wage in CNMI.
  - **TIP** – All applicants must ensure the wage offered in the employer's job opportunity and the wage offered in the electronic job order posting equal or exceed the assigned Prevailing Wage.



# Helpful Hints and Reminders

- **Do not submit duplicate applications** for the same job opportunity.
- Employers filing through the FLAG system must complete all required fields and upload all required and relevant supporting documentation.
- Upload NOD responses and Recruitment Reports in the "My Cases" tab in your FLAG System account.
- **Do not send duplicate documents** or NOD responses by uploading them to the FLAG system and sending them to the CNPC Help Desk.
- If you experience any technical issues with the FLAG System, immediately contact the FLAG Help Desk from the Support tab at <https://flag.dol.gov/support/contact>