

California Wildfires Guidance

Question: Will the Office of Foreign Labor Certification (OFLC) allow for extensions of response deadlines or other reasonable accommodations addressed below in light of the damage done by the California wildfires?

Answer: Yes. We recognize that the California wildfires generated significant damage to businesses in California. OFLC has established internal procedures that recognize, as a result of the disaster, employers and/or their representative(s) may not be able to timely respond to a request for information or documentation, such as an audit, etc. Accordingly, OFLC will extend the time to respond for employers affected by the disaster. Extensions will be granted for issues that arise from disaster-related conditions, including delays caused as a result of the disaster, as well as those delays that may have occurred as a result of disaster preparations in the week before the disaster.

Mail delivery. Currently, the U.S. Postal Service and other delivery services are not delivering mail to certain areas impacted by the California wildfires. Until further notice, National Processing Centers will not send correspondence by mail to zip codes in Federal Emergency Management Agency (FEMA)-declared major disaster counties affected by the California wildfires where there is either no mail service or partial mail service, as shown on the U.S. Postal Service website at <https://www.usps.com/>.

Normally, copies of correspondence from OFLC regarding applications are sent to both the employer and the legal representative named on the application. OFLC will continue processing every case to the extent feasible. Because some areas have no or partial mail delivery and no planned restoration date, OFLC will contact employers or their representatives via email or telephone, if that information is contained in the application file, to arrange for delivery of certifications via alternate delivery services or to an address unaffected by postal interruptions. OFLC also encourages employer representatives or employers to proactively provide updated contact information to the appropriate processing center using the email addresses and or telephone numbers listed below.

Email delivery. OFLC will continue to contact employers, attorneys, and agents by email under current procedures, but OFLC recognizes that internet access and cellular coverage may not be available in areas impacted by the California wildfires. The employer, attorney, or agent may respond if able to do so, and if unable to respond immediately, OFLC will extend the time for response.

For information on due dates in response to OFLC requests, please see the relevant section below.

Advising OFLC of new mailing addresses and contact information. Because some employers and/or their attorneys may be relocating from disaster-impacted areas on a temporary or permanent basis, employers or their attorneys are asked to contact the Processing Center handling the case as follows:

- Any questions, requests for extensions in replying to audits and other Center requests, changes of address, phone number, or email address, etc. from the OFLC's Chicago National Processing Center (CNPC) related to the **H-2A Temporary Agriculture Program, H-2B Temporary Nonagricultural Program, or H-1B Specialty Occupations Program** should be directed to the CNPC at (312) 886-8000, or use the following e-mail:
 - TLC.chicago@dol.gov
 - Subject: **California Wildfires**

- Any questions, requests for extensions, changes of address, phone number, or email address, etc. related to the issuance of a **prevailing wage determination** from OFLC's National Prevailing Wage Center (NPWC) should be directed to the NPWC at (202) 693-8200, or use the following e-mail:
 - FLC.PWD@dol.gov
 - Subject: **California Wildfires**

NOTE: The prevailing wage validity period will not be changed or extended.

- Any questions, requests for extensions, changes of address, phone number, or email address, etc. related to responding to audits, supervised recruitment instructions, including draft advertisements, etc., from OFLC's Atlanta National Processing Center (ANPC) related to the **Permanent Labor Certification Program (PERM)** should be directed to the ANPC at (404) 893-0101, or use the following e-mail:
 - PermHurricane@dol.gov
 - Subject: **California Wildfires**

Changes to point of contact information. Due to the California wildfires, OFLC will accept changes to employer, agent, or attorney point of contact information.

Due dates. To address the California wildfires, OFLC provides the information below to clarify the applicability of due date deadline extensions.

For applications in the H-2A, H-2B, and PERM programs, and requests for Prevailing Wages, where either the employer or its attorney or agent is located in a California wildfire major disaster area (the counties that have been or are later designated by FEMA as disaster areas eligible for Individual or Public Assistance), OFLC is postponing certain regulatory and procedural deadlines. Specifically, OFLC is extending deadlines for employer responses to ANPC, CNPC, and NPWC issued audit requests, requests for additional information, requests for reconsideration, and similar requests that have deadlines. Extensions of time to appeal either (1) agency denials of labor certifications, debarments, revocations, or other agency actions related to the labor certification to the Office of Administrative Law Judges, or (2) adverse final agency actions on such matters to a federal court, must be made in each case to the presiding authority.

If the specific deadline falls during the period from November 12, 2018, until February 11, 2019, the employer's submission will be considered timely if received by the appropriate Center by February 11, 2019.

These extensions apply even if the employer, attorney, or agent has relocated and resumed operations outside the disaster area. The list of counties, parishes, and territories designated by FEMA as major disaster areas eligible for Individual or Public Assistance as a result of the California wildfires is available at <https://www.fema.gov/disasters/>.

Note: The extension to February 11, 2019, applies only to areas for which a "major disaster declaration" has been made with respect to the California wildfires. Major disaster declarations may be amended or newly declared, so employers, agents, and attorneys should continue to monitor the FEMA website for updates for their state.

For the hardest hit areas, OFLC will closely monitor progress and may extend this deadline even further. OFLC will work with stakeholders covered by an extension provided above who may receive written communications applying an earlier or incorrect deadline. OFLC will consider requests for other deadline extensions, including those located outside of a FEMA-designated "major disaster" area but who are otherwise affected by the California wildfires, on a case-by-case basis.

Filing date extensions for PERM applications impacted by the California wildfires. Under current PERM regulations, employers must begin their recruitment efforts no more than 180 days prior to filing a permanent labor certification application, and they must complete most recruitment measures at least 30 days prior to filing. Due to the California wildfires, employers or their attorneys within a FEMA-designated major disaster area may be unable to comply with the requirement of completing their recruitment efforts within the regulatory 180-day time frame. Therefore, OFLC is extending the recruitment validity period by ninety (90) days to allow employers or their attorneys located within a FEMA-designated major disaster area (as defined above) to file their permanent labor certification application, so long as recruitment was begun within 180 days prior to the applicable disaster.

Recruitment must have begun by May 16, 2018, and the filing must occur by February 11, 2019.

If an employer wishes to submit an application under this guidance, where the recruitment period lasted longer than 180 days, it must notify the ANPC with a signed letter explaining why each particular application qualifies under this guidance, through one of the following methods:

- Upload the signed letter to the case file in the PERM system
- Email the signed letter to PermHurricane@dol.gov

H-2A and H-2B contract impossibility and emergency filing. H-2A or H-2B employers affected by the California wildfires may request permission from the CNPC Certifying Officer to terminate work to be performed under the job order and/or work contracts with employees before the end date of work on the certification under the "contract impossibility" provisions found in the regulations at 20 CFR 655.122(o) (H-2A) and 20 CFR 655.20(g) (H-2B), and discussed in

the [Department of Labor's FAQs](#). Impacted employers may also be eligible to use emergency filing procedures, as outlined at 20 CFR 655.134 (H-2A) and 20 CFR 655.18 (H-2B), to file their application closer to their start date of need than is normally permitted. The CNPC Certifying Officer will take into account the employer's reasons for such requests and whether work covered by the certification is within a major disaster area.

Other extenuating circumstances. For employers encountering various challenging circumstances due to the disaster, such as obtaining housing inspections for the H-2A programs, affected employers located in a FEMA-declared major disaster area should contact the State Workforce Agency and the CNPC about their specific circumstances and seek guidance. Any other inquiries regarding OFLC's TEMP, prevailing wage, or PERM programs should be directed to the CNPC, NPWC, or ANPC, respectively.

Additional resources. For information from U.S. Citizenship and Immigration Services (USCIS) regarding immigration relief measures that may help if you are affected by unforeseen circumstances, including natural disasters, please visit the USCIS website at <https://www.uscis.gov/>. You can sign up to receive updates from USCIS by subscribing to their "Alerts" RSS Feed on their website.

For information from FEMA regarding disaster-related measures, including disaster assistance, please visit the FEMA website at <https://www.fema.gov/>.

In addition, please consider visiting additional state emergency management resources in California (<http://www.caloes.ca.gov/>).