



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** - 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 C, 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 include unnecessary, ambiguous, overbroad, or conflicting content.



## Common deficiencies:

- Incomplete or Improperly Filed Form ETA-9142C (Missing fields, typos, etc.)
- Mismatched Information (Information not consistent between 9142C and JVA)
- Inconsistencies within the JVA (Conflicting information contained within JVA)


These deficiencies will result in a NOD, as will applications prepared with unnecessary, ambiguous, overbroad, or conflicting content.



## Incomplete or Improperly Filed Form ETA-9142C

- **A.1** indicates application is a **Renewal** but no permit renewal date is entered 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"/> <b>Renewal of approved employment</b>
2. <b>CW-1 Permit Renewal:</b> If "Renewal of approved employment" is marked in Question #1, enter the date on which the CW-1 visa status of the nonimmigrant worker(s) will expire. §	<input type="text"/>

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



## Incomplete or Improperly Filed Form ETA-9142C

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

3. <b>Long-Term Worker:</b> 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 *		<b>Period of Intended Employment</b>	
		3. Begin Date: *	4. End Date: *

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



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

Example:

- April 1, 2021- March 31, 2022 is one year.
- April 1, 2021 – April 1, 2022 is one year plus one day.



## Incomplete or Improperly Filed Form ETA-9142C

- Overtime rate listed [E.c.6.a], but “N/A” was checked in Overtime available section [E.d.3]

6. Basic Wage Rate Paid *		6a. Overtime Wage Rate Paid \$	
From: \$ <u>    </u> . <u>    </u> *	To: \$ <u>    </u> . <u>    </u>	From: \$ <u>    </u> . <u>    </u>	To: \$ <u>    </u> . <u>    </u>

**★ TIP:** If overtime wage is provided, then E.d.3 must indicate “Yes”



3. <b>Overtime Available:</b> 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

- SOC code and SOC Occupational Title [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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**TIP:** Use the SOC Occupational Code and Occupational Title that are given in the PWD by the NPWC, [E.3 and E.3a]

<b>E. Prevailing Wage Determination</b>	
<b>FOR OFFICIAL GOVERNMENT USE ONLY</b>	
1. PW tracking number P-500-20338-9360	2. Date PW request received 12/03/2020
3. SOC (ONET/OES) code 49-9071	3a. SOC (ONET/OES) occupation title Maintenance and Repair Workers, General





## Incomplete or Improperly Filed Form ETA-9142C

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

c. Place of Employment and Wage Information		
1. Worksite Address *		
2. Worksite Address § (apartment/suite/floor and number)		
3. City *	4. State *	5. Postal Code *
6. Basic Wage Rate Paid *	7. Overtime Wage Rate Paid *	

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

5. <b>Employer-Provided Tools and Equipment:</b> 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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## 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 info or inconsistent phone numbers in recruitment info section [E.e.1, 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

### 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.

★ **TIP:** Appendix C must be printed, signed and dated by the employer, then scanned and uploaded to the application as a PDF.



## NOD Triggers

Section **E.c.7** indicates 'Piece Rate', but inadequate explanation is given.

7. Per (Choose only one) \*

Hour     Week     Bi-Weekly

Month     Year     Piece Rate

The employer will receive a NOD with instructions to amend the CW-1 application to add an explanation of what constitutes a 'piece' for the employer's offered piece rate wage.

The employer may also be asked for a statement to indicate that the required wage is guaranteed. (For each workweek the average hourly piece rate earnings result in an amount at least equal to the required wage).



## NOD Triggers – Continued

- 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-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.

**\*Note:** Preferences are deemed requirements



## NOD Triggers – Continued

- Ambiguous or 'soft' requirements.
  - “People person”, “language skills”
  - Requirements must be specific and measureable/testable
- 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.



## NOD Triggers – Continued

- Job Duties [E.b.5] have been copied and pasted from O\*Net, often including the statement “See more occupations related to this task”.
- This often results in a NOD because the O\*Net description is too broad and does not adequately inform an interested applicant about what the job is or what they will be doing.

Using the O\*Net occupation description will yield a PWD because the PWD is focused on the job description and requirements, but being sufficient to yield a PWD does not mean the O\*Net occupation description is specific enough for a worker to have any meaningful understanding of what the job is.

- Employment certificate/police clearance not indicated as equally applied.
- Not specifying which languages are required (some or all in a list) or what level (spoken, written).
- Excessive language requirements (not clearly tied to the duties of the position).





## Common Form Deficiencies

Many applications are denied due to discrepancies between the 9142C and the JVA. When running advertisement after a NOA 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 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).



## Common Form Deficiencies

Example of 9142C – JVA mismatches:

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



PERFORM OTHER RELATED DUTIES FROM TIME TO TIME.

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.



## Common Form Deficiencies

Example of 9142C – JVA mismatches:

- 9142C: Frequency of pay is bi-weekly.



Pay Range [E.c.7] Hour

Frequency of Pay **Biweekly**  
[E.c.8]

- JVA: Frequency of pay is bi-monthly



Hours per Week	40
Hours per Day	8
Payment Frequency	<b>BI MONTHLY</b>
Overtime Available	No



## Common Form Deficiencies

Example of 9142C – JVA mismatches:

- 9142C: Tools provided



Employer-Provided  
Tools and Equipment  
[E.d.5]

Yes

- JVA: No Tools



Required tools,  
supplies and  
Equipment to be  
provided (enter  
none, if none)

none



## Common Form Deficiencies

Example of 9142C – JVA mismatches:

- 9142C: Requirements



**Special Requirements [E.b.12]** MUST HAVE KNOWLEDGE IN COMPUTER AND CALCULATOR.

- JVA: Additional Requirements



**Qualification Requirements:** Must have knowledge in computer and calculator. Must have good communication skills and must be able to work on a flexible time schedule depending

**NOTE:** The additional requirements listed in the JVA are also problematic for being vague and unmeasurable (e.g. good communication skills).



## Common Form Deficiencies

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 from the line item to the number in the descriptive paragraphs.  
★ **TIP:** Leave these items out of your descriptions and narratives.
- Housing will say “No”, but in the Comments section, employer explains that it offers assistance in finding lodging for the workers.
- 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

Here is a list of the issues most commonly encountered:

- 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- in the report the employer states no applicants 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 actual Form ETA-9142C be posted in two conspicuous locations.*





## End of the Presentation

# QUESTIONS?