



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"/> Renewal of approved employment
2. CW-1 Permit Renewal: 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. 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: *	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. 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

- 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]

E. Prevailing Wage Determination	
FOR OFFICIAL GOVERNMENT USE ONLY	
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. 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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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	BI MONTHLY
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?