

Permanent Labor Certification
Frequently Asked Questions

November 29, 2006

WITHDRAWAL

How can an employer withdraw a PERM application if the employer has difficulty withdrawing electronically or the application was originally filed by mail?

In the event an employer is unable to withdraw electronically, the employer should send a **withdrawal request** by e-mail to the appropriate National Processing Center at: PLC.Chicago@dol.gov (for Chicago) or PLC.Atlanta@dol.gov (for Atlanta). To ensure the request is processed expeditiously, please include the following information in the e-mail request:

- o Show the words "Withdrawal Request" and the employer's name in the subject line of the e-mail.
- o In the body of the e-mail, include the following information:
 - o Application Number
 - o Employer's Name
 - o Employer's EIN
 - o Alien's Name
 - o Name and title of individual requesting withdrawal

If the application was filed by mail or if the employer does not have access to e-mail, a letter must be mailed to the National Processing Center to which the application was originally submitted using the format as outlined above.

How can an employer withdraw a PERM application if it has already been certified?

An employer may withdraw a certified PERM application at any time. A certified PERM application may not be withdrawn electronically; therefore, the employer should send a **withdrawal request** by U.S. Mail to the appropriate National Processing Center where the original certification was granted as follows:

| | | |
|---|------------------|---|
| Chicago National Processing Center ATTN: Certification Withdrawal 844 N. Rush Street 12 th Floor Chicago, Illinois 60611 | <u>OR</u> | Atlanta National Processing Center ATTN: Certification Withdrawal Harris Tower 233 Peachtree Street, Suite 410 Atlanta, Georgia 30303 |
|---|------------------|---|

The employer must enclose all pages of the original certified ETA Form 9089 issued by the National Processing Center and include the following information in the written withdrawal request:

- o Show the words “Withdrawal Request – Certified PERM Application” and the employer’s name in the subject line of the letter.
- o In the body of the letter, include the following information:
 - o Application Number
 - o Employer’s Name
 - o Employer’s EIN
 - o Alien’s Name
 - o Name and title of individual requesting withdrawal

NOTE: While an application may be withdrawn at any time, if the employer has received an audit letter, it is still required to comply with the audit procedure provisions of 20 CFR § 656.20. The employer must submit the documentation required by the Certifying Officer within 30 days from the date of the audit letter.

Once an employer requests its application be withdrawn, how soon can the employer file a new application for the same alien beneficiary?

After requesting a withdrawal, an employer may not file a new ETA Form 9089 for the same alien beneficiary until one of the following occurs:

(A) Employer sees, using the online PERM system, that the status of the original case changes from “In Process” to “Withdrawn,” or

(B) Employer receives confirmation (via standard U.S. Mail or e-mail) from the NPC that the ETA Form 9089 currently in process has been withdrawn.

The employer is reminded that an employer may not file a new application merely because the online status changed to “Denied.” The employer must wait until it receives the Final Determination Form from the National Processing Center stating the reasons for the denial. This ensures the employer is apprised of all the application’s deficiencies.

ALIEN EXPERIENCE

If the employer’s minimum requirements include some period of training, must the alien beneficiary’s training be listed on the Application for Permanent Employment Certification, ETA Form 9089, Section K, as well as attested to in Section J?

An employer must list the actual minimum requirements for the job opportunity sought to be filled through the filing of the labor certification application. If training is required, the employer must list the training required for the position in Section H.5, noting the number of months of training required in H.5.A, and the field of training in H.5.B. The employer and alien beneficiary must also attest that the alien beneficiary meets the training requirement in section J.17.

The employer is also required to list in Section K, as noted on the Form ETA 9089, “any other experience that qualifies the alien for the job opportunity for which the employer is seeking certification.” Accordingly, an employer seeking certification should list in Section K any training experience possessed by the alien that qualifies the alien for the job opportunity, regardless of how the training was secured. The source of the training should also be identified. For example, an application for the job opportunity of physician filed on behalf of an alien that requires 36 months of medical residency training in H.5 should not only mark section J.17 as “yes” but also list in Section K all training experience by which the alien meets that training requirement, as well as any other experience requirement. An employer filing an application for a job opportunity that requires 12 months of training in section H.5 should also list the training received by the alien in section K, regardless of whether it was a paid training opportunity, and also list the source of the training.

When completing section K, enter the training provider in the employer information section, to include the address. For the type of business, enter ‘training provider’ unless the training is of a work study type such as an apprenticeship or medical residency. The job title should be ‘Training’ unless there is an actual job title, in which case it should begin with ‘Training –’ followed by the title, such as ‘Training – Apprentice Carpenter’. The employer should enter the beginning and end dates of the training. When there is an actual number of hours of training, the employer should enter those actual hours, otherwise the employer should enter the average number of hours per week spent in training. In the “Job Details” the employer should list the topics covered by the training, any certification of completion issued and, when applicable, the organization issuing the certificate, if different from the training provider, and the final test completion or certification date.

For example:

Employer A completes Section K as follows:

1. Large Teaching Hospital
2. 111 Main Street
3. Anytown, DC 99999 USA
4. Hospital
5. Training-First Year Resident
6. 01/01/2000
7. 12/31/2000
8. 60
9. Basic hospital procedures. Patient care techniques. Staff duties and responsibilities.
10. First Year Residency Certificate, 12/31/2000

Employer B completes Section K as follows:

1. Independent Project Management School
2. 111 Main Street
3. Anothertown, DC 99999 USA
4. Training Provider
5. Training
6. 01/01/2000

7. 12/31/2000
8. 20
9. Basic project management concepts. Use of graphics tools. Resource allocation.
10. Professional Project Manager Certificate, Project Management Institute, 01/12/2001

TIMEFRAMES

How do I count days to establish recruitment timelines and time periods as outlined by the regulation?

Timelines are the number of days prior to or after a required event. When counting a timeline, the day of the event is not counted, the next day is counted as one, and the last day is included in the count. Thus, when determining the required 30 day timeline prior to filing an application for a newspaper advertisement placed on Thursday, February 1, 2007, the Thursday is not counted because it is the day of the event. Friday, February 2nd, is counted as day 1 of the timeline; Saturday, February 3rd, day 2; etc., up until Saturday, March 3rd, which is day number 30. The application can be filed on the 30th day after the event, Saturday, March 3rd, but not before. The same result is achieved if counting back from the day of the filing. If the application is filed on Saturday, March 3rd, the 3rd, is not counted because it is the day of the event. Friday, the 2nd, becomes day 1, Thursday, the 1st, is day 2, back to February 1st, the 30th day. Under the limitation precluding filing in the 30 days prior to the date of filing, if an application was filed on March 3, 2007, a newspaper or national journal advertisement could have been placed as late as February 1st, but no later.

Time Periods are the number of days during which an activity must take place. Examples of time periods are the requirement a job order must be placed for 30 days and the requirement that a Notice of Filing must be posted for ten consecutive business days. When counting a time period, both the start date and end date are included in the count. Thus, if a job order is on the State Workforce Agency web site from February 1, 2007, through March 8, 2007, February 1st, is day 1, February 2nd, is day 2, March 2nd, is day number 30, March 8th, is day number 36.

To determine the first date on which the application can be filed after posting a job order, the 30 day time period for the job posting and the 30 day prior to filing timeline must both be calculated. In the example we are using, March 2nd, [not March 8th] is the last day of the 30 day time period for the job order placement and is considered the event day so it is not counted in the timeline. Rather, the counting of the filing timeline starts on March 3rd, which is counted as day 1, March 4th, is day 2; etc., up until April 1st, which is day 30, the earliest possible filing date for an application. In counting *backward* from April 1st to February 1st, the first is only day 59, not day 60 as would be the outcome if the 30 day time period required for the job order plus the 30 day timeline restriction prior to filing were added. This is because two counting paradigms are being combined—one where the event (or start date) is counted, the other where it is not. Counting *forward* 60 days from the

start of the 30 day job order time period does provide the correct calculation if the first day of the event is counted, as required, when counting days in a time period. To avoid mistakes, it is recommended that the time period and the timeline be counted separately.

As another example, the regulation requires a Notice of Filing posting for a time period of ten consecutive business days. If the order is posted on Monday, April 30, 2007, Monday is day 1, Friday, May 4th, is day 5; the following Monday, May 7th, is day 6; and Friday, May 11th, is day 10. May 11th, is the last day of this time period and is therefore defined as the event and is not counted when calculating the 30 day restriction prior to filing timeline. To calculate the 30 day timeline, May 12th, is day 1, May 13th, day 2, May 23rd, day 12; May 31st, day 20; and June 10th, is day 30. The application can be filed on June 10, 2007.

Examples of the earliest filing date permissible for a particular Notice of Filing posting or job order placement date are as follows:

If the Notice of Filing is posted on Thursday, June 28, 2007, the posting dates must be June 28 – July 12, and the earliest filing date permissible is Saturday, August 11, 2007, (the notice of filing must be posted for “ten consecutive *business days* and, therefore, neither weekends nor the Fourth of July are counted).

If the Notice of Filing is posted on Monday, August 20, 2007, the posting dates must be August 20 – August 31, 2007, and the earliest filing date permissible is Sunday, September 30, 2007 (the 30 day prior to filing limitation has no business day restriction and, therefore, weekends and holidays are included in the count).

If the job order start date is Monday, November 13, 2006, the end date must be Tuesday, December 12, 2006, and the earliest filing date permissible is Thursday, January 11, 2007 (neither the 30 day job order placement requirement nor the 30 day prior to filing limitation have a business day restriction and, therefore, weekends and holidays are included in the counts).

In Summary: There are two “types” of time calculations used by the Permanent Online System: timeline calculations and time period calculations.

1. Timeline calculations are those calculations verifying the number of days prior to or after an event. For example, verifying that advertisements did not run less than 30 days but no more than 180 days from the date of filing.
 - When calculating ***timelines***, the day the event occurred is not counted. The next day is counted as day one and the last day of the event is included in the count.
2. Time period calculations are those calculations verifying the number of days an activity took place. For example, verifying a job order ran for 30 days.
 - When calculating ***time periods***, the day the event occurred is counted as day one and the last day of the event is included in the count.

ACCEPTABLE PUBLICATIONS

Is the employer permitted to use an electronic national professional or trade journal?*

The employer may not use an electronic national professional journal to satisfy the provision found at 20 CFR 656.17(e)(1)(i)(B)(4) permitting the use of a journal as an alternative to one of the mandatory Sunday advertisements for professional positions. The employer may not use an electronic national professional journal to satisfy the provision found at § 656.18(b)(3) requiring an advertisement in a journal under optional special recruitment procedures for college and university teachers. The employer must use a print journal to satisfy these two requirements. However, if the employer wishes to use a professional or trade organization as a recruitment source to satisfy the additional recruitment required for professionals found at § 656.17(e)(1)(ii)(E), the employer may use that organization's electronic journal to place an advertisement. Dated copies of pages from the electronic journal showing the advertisement can serve to satisfy the documentation requirement.

* This FAQ replaces an existing FAQ.