

Memorandum

To: All Interested Clients

From: Jeffrey A. Weisberg, Esquire and Amarnath Gowda, Esquire

Date: June 20, 2013

Re: New Version of ETA Form 9141, Application for Prevailing Wage Determination

Introduction

On June 18, 2013, the U.S. Department of Labor (“DOL”) National Prevailing Wage Center (“NPWC”) issued a new version of its ETA Form 9141, Application for Prevailing Wage Determination (“ETA 9141”), which changes the preparation of PERM applications and support documents on behalf of roving employees.

Following is a question-and-answer format to help clarify how the PERM process is impacted by the new version of the ETA 9141, and what is required from affected employers in order to obtain prevailing wage determinations.

1. How important is the ETA 9141 to the PERM process?

In order to file any PERM application, an employer must first obtain a valid prevailing wage determination from the NPWC. The ETA 9141 is an integral and necessary document in the process.

2. Which details of the job opportunity’s requirements provided on the ETA 9141 must be consistent with corresponding information included on the PERM application and in the advertisements?

Such details include any training, education and experience requirements. Additionally, the new ETA 9141 requires an employer to specify every city, county and state where the alien likely will have to work to perform the job opportunity. The NPWC has made clear that it cannot issue a prevailing wage determination for unanticipated worksites.

3. When does the new version of the ETA 9141 take effect?

On June 18, 2013, the NPWC placed its latest version of the ETA 9141 online, effective immediately. An employer no longer is able to use the prior version. Additionally, any draft of the prior version created before June 18, 2013 no longer can be used or accessed.

Note: If an employer has submitted the previous version of the ETA 941 to the NPWC successfully before June 18, 2013, or has obtained a prevailing wage determination of the prior version, then the ETA 9141 is usable.

4. What are the key changes to the new ETA 9141?

The most important amended portions deal with the job opportunity's intended worksite. On the previous ETA 9141, an employer with a job opportunity for a roving employee with unpredictable work locations was able to state the worksite as "various unanticipated locations throughout the U.S." The new ETA 9141 requires an employer to specify every city, county and state where the alien likely will have to work to perform the job opportunity. The NPWC has made clear that it cannot issue a prevailing wage determination for unanticipated worksites.

Note: The new ETA 9141 does not affect an application for a sedentary job opportunity (i.e., involving a single permanent worksite).

5. A number of employers recently have published advertisements on behalf of roving employees which do not include specific information regarding intended worksites. May employers still use these advertisements, which otherwise meet PERM requirements, to support future PERM filings?

That depends. If an employer has submitted the previous version of the ETA 941 to the NPWC successfully before June 18, 2013, or has obtained a prevailing wage determination of the previous version, then the ETA 9141 and the existing ads are usable. If an employer has submitted the new ETA 9141 on or after June 18, 2013, then the company must publish new ads reflecting specific worksites.

6. Precisely what information regarding the intended worksite for a roving employee is now required on the ETA 9141?

The new ETA 9141 requires an employer filing on behalf of a roving employee to specify any travel/relocation requirements as well as every city, county and state where the alien likely will have to work to perform the job opportunity. It is very important for an employer to identify the counties as well as the cities and states of the proposed worksites. The NPWC has made clear that it cannot issue a prevailing wage determination for unanticipated worksites.

7. In a case involving a roving employee, what specific information regarding intended worksites should the employer provide, and how quickly must an employer provide this information?

In order to file any PERM application, an employer must first obtain a valid prevailing wage determination from the NPWC. The ETA 9141 is an integral and necessary document in the process. Therefore, an affected employer must provide information to this office promptly. Specifically, an employer should provide us with a list of the six geographic areas where the company most frequently assigns its technical employees to projects, bearing in mind that two of those areas include the location of the employer's headquarters and the location of the alien's worksite. "Geographic area" means the city, county and state of the project location.

8. May the affected employer list more than six geographical areas of intended employment?

Yes. However, the exact worksite information entered on the ETA 9141 also appears on the PERM application and in all of the advertisements. Providing a long list of potential worksites increases the cost of newspaper advertisements. Therefore, we suggest that the employer pare down the list to those locations where the beneficiary most likely will have to work to perform the job opportunity. A list of six locations seems reasonable for this purpose.

Note: In a scenario involving multiple work locations, the prevailing wage listed on the PERM application reflects the highest prevailing wage of all the locations.

9. Will the alien beneficiary be able to travel/relocate during the PERM process and, thereafter, the I-140 process?

Yes, provided that the travel/relocation is to one of the six geographical areas listed in the ETA 9141. The exact worksite information entered on the ETA 9141 also appears on the PERM application and in all of the advertisements. It is possible for the DOL and/or USCIS to question why an alien beneficiary is working in a location other than one of the intended geographic areas of employment. For this reason, we suggest that the employer carefully list the intended worksites, bearing in mind that one of them is where the alien works.

Conclusion

We welcome clients to address any questions and/or concerns regarding the above guidance to Jeffrey A. Weisberg, Esq. (jeff@gowda.com) or Amarnath Gowda, Esq. (amarnath@gowda.com).