

### **What recruitment steps are required under PERM?**

PERM requires employers to undergo specific forms of recruitment within the six months prior to filing the PERM application. These forms of recruitment include: a 30 day job order with the State Workforce Agency (SWA), an internal notice of filing the job opportunity at the place of employment and two Sunday ads in the newspaper of general circulation.

### **What recruitment documentation is the employer required to keep?**

The employer must prepare a recruitment report describing the recruitment steps taken and the results. This report must include the number of U.S. workers rejected and the lawful job-related reasons for rejection. The employer must also keep evidence of all of its recruitment steps, such as newspaper tear sheets and screenshots of web sites, and copies of all resumes and/or applications submitted in connection with the recruitment steps.

### **How long does the employer need to retain the recruitment documentation?**

For five (5) years from the date of filing of the application.

### **What are the requirements of the Sunday print ads?**

The Sunday ads must be two consecutive Sunday advertisements in the newspaper of general circulation in the area of intended employment that is “most appropriate to the occupation and the workers likely to apply for the job opportunity.” The ad must list the name of the employer, the geographic area of employment, a description of the position specific enough to apprise U.S. workers of the job opportunity and direct applicants to send resumes or report to the employer.

### **What are the requirements of the SWA Job Order?**

The employer must place a job order with its local SWA for the position. The job order should contain the same information as the advertisement, and the employer should request that the SWA refer any potentially qualified applicants directly to the employer.

### **Are there different recruitment steps for professional positions?**

Yes. The recruitment for a professional occupation (those for which the attainment of a Bachelor’s degree or higher degree is a usual education requirement) consists of a SWA job order, two Sunday print ads, an internal notice and three additional recruitment steps. The recruitment for non-professional occupations consists only of a job order, the two Sunday ads and an internal notice.

### **What are the three additional recruitment steps for professional jobs?**

Employers can choose three of the following options: (1) attendance at a job fair; (2) posting on the employer’s website; (3) posting on a job search website other than the employer’s; (4) participation in on-campus recruiting; (5) advertising in a trade or professional organization; (6) retaining private recruitment firm; (7) including the position in an employee referral program, if it includes identifiable incentives; (8) placing a notice at a campus job placement office; (9) advertisement in local or ethnic newspapers, to the extent they are appropriate for the job

opportunity; or (10) placing radio and television advertisements. The employer must conduct three separate recruitment steps. i.e., one of the three steps may not be conducted three times to satisfy requirements.

### **What is involved with the internal Notice of Filing?**

An employer must post a Notice of Filing for a period of ten consecutive business days at the worksite or the job opportunity. The Notice must contain the salary for the position, but may contain a salary range so long as the lower level of the range meets or exceeds the prevailing wage. The notice may contain the same description of the position as is placed in the newspaper advertisement, and should include a contact person for employees who wish to apply for the position. In addition, the notice must contain language indicating that the posting is in connection with an application for labor certification, and that any person having information bearing on the application can submit that information to the Department of Labor.

### **If a position requires a certain level of work experience, can the experience gained with the petitioning employer be used?**

Employees may use experience gained with the petitioning employer, but only where the experience was gained in a position that was not “substantially comparable” to the position involved in the labor certification. A position will be considered “substantially comparable” if at least 50% of the duties of the two positions are the same. For example, if a Software Engineer spends 100% of her time developing software is promoted to Sr. Software Engineer in which she spends 20% of her time managing and 80% of her time developing software, the two positions are “substantially comparable” and her experience as a software engineer cannot be used to qualify her for the position of Sr. Software Engineer. However, if she has prior work experience with another employer as a Software Engineer, that experience could be used, as applicable, to meet the job requirements.

### **When considering an applicant, if the job requires four skills and the job applicant lacks one of those skills, can that applicant be lawfully rejected?**

It depends. Lack of certain skills may not be enough to lawfully reject an otherwise qualified U.S. worker. The employer needs to explore and evaluate whether the U.S. worker applicant could perform the job with a reasonable amount of on the job training in the lacking skill(s). What is reasonable will depend on the particular employer and the job opportunity.

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*For more information about your Marks Gray Immigration team led by **Giselle Carson** may assist you today, please visit our [website](#).*