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PERM: Changes to the Labor Certification Process for Green Cards

The U.S. Department of Labor (DOL) has published regulations that will change significantly the labor certification process when they take effect on March 28, 2005. After this date, there will be no more filing of traditional labor certification applications or reduction in recruitment (RIR) applications. The new Program Electronic Review Management (PERM) system will implement an automated attestation application like the Labor Condition Application (LCA) for H-1B visa petitions that will require extensive attestations of prior recruitment, prevailing wage and non-displacement of US workers. The PERM program will also impose additional restrictive requirements for the labor certification process.

The PERM program changes do not apply to labor certification applications that have already been filed with the DOL, nor to those filed prior to March 28, 2005 when the new regulations take effect.

For employers who are thinking of starting the labor certification process for employees, please review the list below of the most significant changes to the permanent labor certification process. If you want to avoid any of these new requirements, we recommend that you file applications under the current system before March 28, 2005.

Some of the new requirements of PERM include:

Prevailing wage:

- The employer must pay the sponsored employee at least 100% (rather than just 95%) of the prevailing wage for the position as determined by the DOL.

Required Recruitment:

For a professional occupation, the employer must:

- Advertise in two Sunday newspaper editions.
- Undertake at least three additional means of recruitment such as job fairs, company website, internet sites, on-campus recruiting, trade or professional organizations or other acceptable alternate forms of advertising. If the position requires experience and an advanced degree, it is recommended that the employer substitute an advertisement in a national journal or publication for one Sunday newspaper advertisement.
- Place a 30-day job order with the DOL for the offered position.

Conduct of Recruitment:

- Disqualifying candidates - The employer is not allowed to disqualify a US worker who can reasonably be trained to perform the duties of the position.
- Layoffs - If the employer has had any layoffs in the sponsored employee's occupation or a related occupation within 6 months prior to filing the application, the employer must document that it has contacted and considered all laid off employees.
- Audit - Recruitment materials and results must be kept by the employer for five years and are subject to government audit.

Employer with 10 or fewer employees:

- The employer must document any family relationship between its employees and the sponsored employee if the sponsored employee is one of 10 or fewer employees.

Payment of Legal Fees:

- If the sponsored employee is "required" to pay legal fees, the DOL may question whether the position is truly open to US workers, and thus whether it is eligible for labor certification.

If your company wishes to start labor certification applications for employees under the current regulations, contact Trow & Rahal now in order to get the applications prepared and filed with the DOL before March 28, 2005. Given the 90-day deadline, we will only prepare new applications to be filed as "regular" labor certification applications, without a request for reduction in recruitment (RIR).

In order to reduce backlogs in the processing of applications filed under the current system, the DOL has established regional backlog reduction centers. These centers will help to reduce the lengthy processing times for pending labor certification applications and for those filed before March 28, 2005, whether filed as regular applications or as RIR applications.

If you have questions about these upcoming changes, or how they may affect a particular case, or wish to discuss the option of filing under the current regulations versus the new PERM regulation, please contact one of the Trow & Rahal attorneys listed below.

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