

**HATCH LAW OFFICE**

121 Market Street, Suite 202  
Durham, NC 27701

P.O. Box 1847  
Durham, NC 27702

---

**Employers' Instructions for Labor Certification (PERM)**

Your employee has hired me to help obtain legal permanent resident status through the Program Electronic Review Management System labor certification (PERM) process. As part of this representation, you have agreed to be the sponsoring employer on the application for labor certification and, later, the application for alien worker (Form I-140). This memo will touch on your role in the PERM process, my representation of you, the nature of this joint representation, and the future responsibilities associated with the labor certification process. Even if I have gone over some of this with you in person or by telephone, I want to repeat these facts in writing, so that you will have something to refer to if questions arise and simply to insure that I have thoroughly and accurately conveyed everything that follows.

By agreeing to sponsor a person for labor certification, you have agreed that you will participate in the process by providing accurate information as required to complete Department of Labor (DOL) and Immigration Service (USCIS) applications. This information will include some disclosure of the nature of your business, your financial ability to pay workers, previous immigration or labor difficulties, and the nature of the job you are offering to the foreign worker. You have also agreed to work together with me in creating a job title and description, signing all required applications and supporting documents, furnishing documentary evidence as needed, and conducting the recruitment process needed to satisfy DOL requirements.

Your compliance in all these efforts is entirely voluntary on your part, and you may withdraw from this process at any time. You are not under a legal obligation.

**My Representation of You**

I will be your lawyer. As such, I owe you a duty of confidentiality and a duty of diligent, truthful representation. However, my representation of you and your business in this case is strictly limited to those acts needed to obtain a labor certification and eventual legal permanent resident status for the foreign worker. If other legal needs arise, either as an indirect result of this case or unrelated to this case, I have not undertaken any responsibility to handle those for you. The single objective of this representation is obtaining legal permanent resident status for the foreign worker, and other legal needs or objectives must be separately handled by me or other legal counsel.

**Joint Representation**

In this case I am jointly representing you and the foreign worker. I have a full duty of loyalty to both of you. We began this case with full disclosure of all relevant facts about both of your intentions in this representation and mutual agreement that there is no conflict of interest. I believe that this state of affairs will continue.

Joint representation means that although I have a duty to keep confidential anything I learn in confidence from you or the foreign worker, I cannot keep anything confidential between

the two of you. Anything you tell me, I may tell him or her. Anything she or he tells me, I may tell him or her. Don't tell me anything you don't want him or her to know.

In addition, if a conflict arises between the two of you concerning anything, I will not represent either of you against the other and, if that conflict at all affects the objective of this representation, I will withdraw from representing both of you. Conflicts that might create such a problem include conflicts over wages and conditions of pay, accusations of theft or embezzlement, tort or employers' compensation disputes, or any other form of legally significant disagreement.

### **The Employer's role**

As a sponsoring employer, you are trying to persuade the DOL that you have a job which needs filling and that you are unable to find a willing, available, and qualified US applicant to fill that job. If you are successful, the DOL will issue a "labor certification," that is, permission for you as an employer to hire a foreign worker to fill the job. The employer goes to the DOL *after* already seeking US workers and proving that there are no US workers who are able, willing and qualified for the job. The process has to be done very carefully and methodically or it will not work at all. The steps in PERM are establishing the job parameters, requesting a prevailing wage determination from the State Workforce Agency (SWA), recruitment, screening of applicants, and finally the application. Recruitment entails placing a job order with the SWA and running newspaper ads on 2 consecutive Sundays. Professional level jobs also require further recruitment steps, which include three other types of advertising. There are a few options for the additional advertising; these are considered minor compared to the newspaper.

PERM is an online application. We will need you to register online with a user name as the employer and you will be assigned a PIN and password from the DOL. Unfortunately, we are not allowed to register for you. The website is [www.plc.doleta.gov/](http://www.plc.doleta.gov/). The directions are straightforward. I will email you detailed instructions when you are ready to begin the process. After you register, it will take a few days for you to receive the first email with your username and temporary password. You then need to go back to the same website and, using this password, log on as a registered user. You will be asked to change your password before continuing. At this time, you can set up a sub-account for your attorney's use. A second email will be sent to you with your unique 4-digit PIN, which is needed to submit the online application. We will need you to give us all of this information to allow us to access your account and file the PERM application.

### **Establishing Job Parameters**

The way a job is described is critical to the success of a PERM application, because the DOL will judge the availability of American applicants to fill that job by whether they meet the standards and are willing to work under the conditions which are part of the job's written minimum requirements. At a later date, the qualifications of the foreign national will also be judged against these written requirements. The DOL is also going to look at whether the job's requirements appear to be specially tailored to fit only the foreign worker. So the goal in creating a job title and description is to describe the job in as much detail as possible, in a way that will eliminate American applicants who would be unable or unwilling to do the job as it needs to be done, and in a way that shows the suitability of the foreign worker.

Once the job is fully described, I will work on fitting it to a title and description, which the DOL will recognize and for which the SWA can find a "prevailing wage." The "prevailing

wage” is the wage that the DOL says must be paid for a worker doing this job. I will warn you: The higher your qualification standards for the job, the higher the prevailing wage will be.

## Recruitment

The next step in the PERM process is the recruitment. We will place a job order with the SWA in the geographic area of intended employment. This job order will run for thirty (30) days, followed by a thirty (30) day waiting period. During this total of 60 days, you will also need to advertise the job in order to test the market. PERM requires that two print ads appear on Sundays in a newspaper of general circulation and that a notice of job availability be posted for at least ten days at the place of work. For professional level jobs, DOL also requires three additional recruiting steps. These could be an online job search ad (which is usually included with the Sunday paper price), employee referral program, radio ad, career fair posting, or trade journal posting. If any other step is usual in your industry when seeking employees, then you need to let me know about that, and we will consider whether it is needed in your case. We can discuss this to keep the cost low.

The print ad should run exactly as we design it together. *The employer should keep the complete page of the newspaper where the ad ran - not just a copy of the ad, nor just the clipped ad, but the whole page of newsprint. The labor department is very picky about this requirement.*

I will send you the internal job posting labeled “Notice of Job Availability” once we have finished the wording for the advertisement. Please note that the form itself has places to write the date it was posted, the date it was removed, and the results of the posting (i.e., did anyone submit a resume or other form of application?). After the notice has been posted for ten days, it should be removed, signed and dated by the employer, and retained to come back to me as part of the complete advertising package.

All recruiting needs to be completed within six (6) months prior to filing the actual DOL form. As far as possible, it’s helpful if all of the recruitment happens simultaneously, but that is not absolutely required.

Important Question: What if a willing, able US worker (a citizen or lawful permanent resident) applies for the job? The first thing to do is consult with me. I will give you some advice about interviewing the applicant and making absolutely certain that he or she cannot be disqualified for a lawful, job-related reason. However, an application from a qualified applicant does not happen very often, even in periods of relatively high unemployment.

As soon as they are available, this is a checklist of documents that should be ready to send to me:

- ◆ The internal posting, signed and with results noted
- ◆ Tearsheets (whole newsprint page) for each printed ad which was run and proof of other ads
- ◆ Copies of all resumes which were submitted in response to any form of ad or posting

With all this information in hand I will complete the online PERM application form.

## Labor Department Responses

This approval, or certification, process typically takes about 60 days. The DOL randomly audits applications. When this occurs, we must produce copies of our advertising steps. To be safe, we should both keep good records of all advertising.

### **Future Responsibilities of Employer**

In order for the employee to obtain lawful permanent resident status, the employer's offer of employment to him or her must remain real and viable up to the time the employee is admitted to lawful resident status. After the employee obtains permission to be employed under the PERM application, this naturally would mean that the employer should hire and begin using that employee. If at any time before then the employer decides not to hire this employee, then the employer should notify the USCIS that it must withdraw its petition for the worker.

However, as long as the possibility of employment in the future remains, there is no need to halt the process. For example, suppose that you currently employ the sponsored worker under a temporary work visa, but, due to a severe downturn in the demand for your product, you are forced to lay him or her off. Despite this downturn, you remain sure that by the time the labor certification and USCIS application process is done, you will be able to re-hire the worker. In this circumstance, the PERM application is still valid, and there is no need to withdraw the petition. This process is, officially, an offer of employment for a future date.

Remember, this process is voluntary on your part. Your choice to sponsor a foreign worker for labor certification shows that you have confidence in that person and that you are willing to go out on a limb for him or her. This says good things about that worker, who has presumably earned your trust, but it also speaks well for you and your company. I am pleased to have the chance to represent both of you.

Sincerely,

Patrick J. Hatch