

Labor Certifications and Permanent Residency Guidelines

Background

Federal immigration law regulates the hiring of foreign nationals by U. S. employers, requiring employers to hire only U.S. citizens, permanent resident aliens, and aliens lawfully authorized to work in the United States. Employment-based immigration is one of the most popular ways to obtain permanent residency. MSU may process a labor certification for qualified individuals to secure the services of the employee on a permanent basis.

Definitions

Foreign National: A person/applicant who is not a citizen of the United States or does not have permanent residency status under U.S. law.

“PERM” Process: Program Electronic Review Management (PERM) Regulations refers to the U.S. Department of Labor’s electronic method for application filing and processing.

Labor Certification: An application that is completed by the University which is submitted to the United States Department of Labor to obtain permission to hire a foreign national to work in a specified position for which there are not qualified workers available who are US Citizens. The labor certification is not a “green card” application. Labor certifications are one avenue to pursue permanent resident status in the United States.

Qualifying Positions

If a department or other unit wishes to sponsor a foreign national employee for labor certification, that employee must be in a permanent and full time position and must possess the requisite qualifications required by the US Citizenship and Immigration Services (USCIS) and/or Department of Labor (DOL) regulations. Permanent, in reference to a research or teaching position, means employees who are:

- University executives and tenurable/tenured faculty appointed on a Board of Regents or MUS Employment contracts.
- Appointed as a Research Scientist or Research Engineer with documented funding for three years from the date of filing the application for labor certification.

The University will **not** apply for labor certification for the following since these positions are not considered permanent appointments and do not have secured, extended funding:

- Graduate Assistants
- Postdoctoral Researchers
- Research Associates, and

- Nontenurable faculty including visiting faculty, adjunct faculty, affiliate faculty and research faculty positions.

College of Agriculture Experiment Station Research Center faculty members, although in tenurable/tenured appointments, do not qualify for college or university teacher labor certification applications as established by the Department of Labor regulations.

Guidelines for Labor Certification Applications

To obtain a labor certificate, the University must demonstrate that there are no qualified US Citizens or permanent resident workers available for the position(s). This is accomplished by MSU's recruitment and selection process for Professional/Non Academic Staff and Tenure Track Faculty positions. In order to apply for a labor certification, an applicant/employee must have been hired as a result of an external *competitive search process* which includes several specific steps defined by federal guidelines.

Tenure Track Faculty Positions: The University is not required to demonstrate that there were no qualified US citizens or permanent residents available for the position, but only that the appointee was the *best qualified applicant*. To determine if the appointee is the best qualified applicant, the University provides details of the departmental recruitment process that led to this faculty appointment. To apply for a labor certification under these rules, the application must be filed within the U.S. Department of Labor within eighteen (18) months of the sponsored employees hire date for the position.

Non-Academic Contract Professional/Administrative and Classified Positions: The University will not sponsor applications for labor certifications for foreign employees in non academic administrative contract professional or classified staff positions. Because it is necessary to demonstrate there are no qualified U.S. workers available for the position to process a labor certification, MSU will not undertake a labor certification for these positions. The experience at the university has been that there are sufficient numbers of qualified U.S. workers available for these positions.

Processing Labor Certifications

- Deans, Department Heads/Chairs and other supervisors of approved labor certification positions are required to initiate the labor certification process. It is not an employee right or benefit; nor should it be considered an expectation on behalf of the foreign national employee. The foreign national may request the process; however, the Dean, Department Head or Director will determine if the college or department desires to pursue the certification process.
- The Office of Human Resources/Affirmative Action is the only campus agent approved by the University and U.S. Department of Labor and Immigration Services to submit an application for Labor Certification for an MSU employee who meets the criteria described above.

- The University, department, college or unit is required to pay at least 100% of the prevailing wage for the appropriate occupational code. Prevailing wage rates are determined by the State of Montana Department of Labor and Industry.
- The University department, college or unit employing the foreign national is responsible for the cost of processing the application (currently \$2000) which is paid to the HR/AA office upon successful certification of the employee.
- The University department, college or unit must pay all costs associated with the application process, including, if required, conducting a “new” search according to labor certification requirements and directives.
- Departments may not charge or recharge the employee for the costs of filing a labor certification.

References

Federal Register - 20CFR656, Sections 656.10 to 656.18 - Labor Certification Process for Permanent Employment of Aliens in the United States

http://www.access.gpo.gov/nara/cfr/waisidx_05/20cfr656_05.html

<http://www.foreignlaborcert.doleta.gov/>

Contact : For questions related to these guidelines and/or the labor certification process, contact:

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<http://www.montana.edu/wwwaffrm/Laborcert.html>