



CW-1 Temporary Employment Certification

Common Issues and Filing Tips



Disclaimer

This presentation is intended for training use only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and any related materials are presented to give the public access to information on the Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.



Terminology:

- **OFLC** - Office of Foreign Labor Certification
- **FLAG** - Foreign Labor Application Gateway (FLAG) System
- **Form ETA-9142C** - Application for Temporary Employment Certification
- **CW-1 application** - Form ETA-9142C, and other supporting or required documentation
- **JVA** - Job Vacancy Announcement
- **NOD** - Notice of Deficiency
- **PWD** – Prevailing Wage Determination
- **NOA** – Notice of Acceptance



Introduction:

CW-1 employers must complete all required fields in the CW-1 application, and upload all required and relevant supporting documentation (e.g., Appendix B, FLC/E documents, job contractor agreement/contract, etc.) in OFLC's FLAG system.

OFLC has encountered CW-1 applications that commonly present either form deficiencies (including recruitment report content), or prepared with unnecessary, ambiguous, overbroad, or conflicting content.



Review of Common Deficiencies

- Incomplete or Improperly Filed Form ETA-9142C
- Inconsistencies Between the JVA and Form ETA-9142C
- Inconsistencies Within the JVA
- Recruitment Report



Incomplete or Improperly Filed ETA-9142C

- Job Duties in Section E.b.5 should NOT be copied and pasted from O*Net, often including the statement “See more occupations related to this task”.
- ★ NOTE: While use of the O*Net occupation description when applying for a PWD is acceptable, the O*Net occupation description is not specific enough for a worker to have a meaningful understanding of what the job will entail. Therefore, the job duties listed in E.b.5 must be specific to the position requested.



Incomplete or Improperly Filed Form ETA-9142C

- Excessive education and/or experience - the experience requirements submitted in the application far exceed the normal requirements for the assigned occupation.

 **TIP** - Review O*NET to verify the months of required job experience for the assigned SOC code indicated at **E.b.10** on the **ETA-9142C** align with what is normal and accepted for the occupation.

For example: SOC code 37-3011, Landscaping and Groundskeeping Workers is classified as Job Zone One, meaning little or no experience is generally required to perform the job. An application indicating 24 months in field **E.b.10** would generate a NOD requiring either the employer to explain the business necessity of the excessive experience requirement or deletion of the excessive experience requirement.

***Note:** *Preferences are deemed as requirements*



Incomplete or Improperly Filed Form ETA-9142C

- Requirements listed in E.b.12 must be specific and measurable/testable.

Examples of **unacceptable ambiguous/subjective requirements**:

- Good moral character
- Good communication skills
- Honest and trustworthy
- Strong interpersonal skills
- Must be results oriented
- Exceptional organizational skills

- Requirements listed in E.b.12 must clearly relate to the occupation.

 **TIP** – All special requirements indicated in field **E.b.12** of the **ETA-9142C** must be normal and accepted for the occupation or contain a clear and detailed description justifying their necessity.



Incomplete or Improperly Filed Form ETA-9142C

- Worksite does not show a physical location or has an incomplete address.

c. Place of Employment and Wage Information

Worksite Address P.O. Box 520324

[E.c.1-5] Tinian, Northern Mariana Islands 96952



TIP: If no street address is available, use a physical description or intersection to describe the worksite location.



Incomplete or Improperly Filed Form ETA-9142C

- Missing information Section E.c. Item 4.
- State field left blank
- Acceptable entries include:
Northern Mariana Islands,
CNMI, MP



3. City * Tinian	4. State * Northern Mariana Islar	5. Postal Code * 96952
6. Basic Wage Rate Paid *	6a. Overtime Wage Rate Paid §	



Incomplete or Improperly Filed Form ETA-9142C

- Recruitment Information [E.e.1] missing specific “days and hours” for applicants to apply for the job opportunity.
- Missing recruitment info or inconsistent phone numbers in recruitment info section [E.e.1, E.e.2].

e. Recruitment Information	
1. Explain <u>how</u> prospective U.S. applicants may be considered for employment under this job opportunity, including verifiable methods of contacting the employer, and the days and hours applicants can apply for the job. *	
2. Telephone Number to Apply *	3. Email Address to Apply *
4. Website address (URL) to Apply *	



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- **A.1** indicates application is a **Renewal** but no permit renewal date is put in **A.2**

A. Nature of CW-1 Application

1. Type of Application (<i>choose only one</i>) *	<input type="checkbox"/> New employment	<input checked="" type="checkbox"/> Renewal of approved employment
2. CW-1 Permit Renewal: If "Renewal of approved employment" is marked in Question A.1, enter the date on which the CW-1 visa status of the nonimmigrant worker(s) will expire. §		



TIP: If "Renewal is selected, the current expiration date must be entered in A.2.



- **A.1** indicates New Employment but renewal date is entered in **A.2**
- Note: Renewal dates must not be in the past



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- **A.3** indicates 'No' to long term workers, but the period of need exceeds one year. Non-long-term workers are limited to one year.

3. Long-Term Worker: Is the employer seeking to employ a long-term worker who was previously issued a CW-1 visa or otherwise granted CW-1 status, as defined in 20 CFR 655.402? *	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

2. Workers Needed *		Period of Intended Employment	
		3. Begin Date: *	4. End Date: *

End date
limited to one
year after
Begin date
when A.3 is
'No'

★ **TIP:** Do not repeat same date as end date as start date.

Example:

- April 1, 2023- March 31, 2024 is one year.
- April 1, 2023 – April 1, 2024 is one year plus one day.



UNITED STATES DEPARTMENT OF LABOR

Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- SOC code and SOC Occupational Title in E.a.1 and E.a.2 are inconsistent with those issued on PWD. These must match.

E. Job Opportunity Information

a. Occupational Classification and PWD

 **TIP:** Use the SOC Occupational Code and Occupational Title that are given in the PWD by the NPWC, Section E.3 and E.3a

1. SOC Occupational Code *	2. SOC Occupation Title *
FOR OFFICIAL GOVERNMENT USE ONLY	
1. PW tracking number P-500-20338 36047	2. Date PW request received 12/03/2020
3. SOC (ONE OES) code 49-9071	3a. SOC (ONE OES) occupation title Maintenance and Repair Workers, General



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Requirements in E.b.8, E.b.9, and/or E.b.10 are not consistent with requirements listed in E.b.12

Example of Inconsistency

Anticipated days and hours of work per week [E.b.6]

Total Hours [E.b.6.a]	40	Monday [E.b.6.c]	8	Wednesday [E.b.6.e]	8	Friday [E.b.6.g]	8
Sunday [E.b.6.b]	0	Tuesday [E.b.6.d]	8	Thursday [E.b.6.f]	8	Saturday [E.b.6.h]	0

Hourly Work Schedule [E.b.7]
9:00 A.M. - 5:00 P.M.

Education [E.b.8]	High School/GED	Training Months [E.b.9]	3	Experience Months [E.b.10]	24	Supervise Others? [E.b.11]	No
-------------------	-----------------	-------------------------	---	----------------------------	----	----------------------------	----

Special Requirements [E.b.12] Must be High School Graduate with at least 3 months of training or work-related experience. Have knowledge of principles and processes for providing customer and personal services including handling of large group of arrival and departure and must be able to understand and follow instructions and out task in order and willing to work under pressure with the specified number of rooms or duties assigned in every day; and has the ability of extent flexibility that includes bending, twisting and lifting, willing to work in flexible shifts, days, evenings, weekend and holidays. Applicants either US Citizens and CW-1 workers must provide school credentials, training and employment certificates.



UNITED STATES DEPARTMENT OF LABOR

Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Supervision requirements – Job Duties in E.b.5 include supervisory duties or the occupation is for a Supervisory position, but E.b.11 is indicated as “No”.

Job Title [E.b.1] ACCOUNTING CLERK

Workers Needed [E.b.2] 1

Period of Intended Employment [E.b.3-4] 6/1/2023 - 5/31/2024

Job Duties [E.b.5]

Provide accounting and clerical support to the Accounting Department. Type accurately, prepare and maintain accounting documents and records. Prepare bank deposits, general ledger postings and statements. Reconciles accounts in a timely manner. Daily enter key data of financial transactions in data base. Provide assistance and support company personnel. Research, track and restore accounting documentation problems and discrepancies. Inform management and compile reports and summaries on activity areas. Function in accordance with established standards, procedures and applicable laws. Constantly update job knowledge. Recommends action to resolve discrepancies. Investigate questionable data.

Anticipated days and hours of work per week [E.b.6]

Total Hours [E.b.6.a] 35

Monday [E.b.6.c] 7

Wednesday [E.b.6.e] 7

Friday [E.b.6.g] 7

Sunday [E.b.6.b] 0

Tuesday [E.b.6.d] 7

Thursday [E.b.6.f] 7

Saturday [E.b.6.h] 0

Hourly Work Schedule [E.b.7] 8:00 A.M. - 4:00 P.M.

Education [E.b.8] Associate's

Training Months [E.b.9] 0

Experience Months [E.b.10] 24

Supervise Others? [E.b.11] No

Special Skilled accounting clerk to perform variety of accounting, bookkeeping and financial tasks. Proven accounting experience, preferably as an Account



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Employer-Provided Tools and Equipment [E.d.5] indicates “N/A” when the job is one that typically uses tools.

5. Employer-Provided Tools and Equipment: Workers will be provided, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned. *	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
--	---

Examples: Auto Mechanic, Commercial Cleaner, Farm Worker, General Maintenance & Repair Worker, Binding and Finishing Worker.

655.423(k): (k) *Employer-provided items.* The employer must provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned.



Incomplete or Improperly Filed Form ETA-9142C: Mismatched Information

- Section E.d.3 indicates “Yes”, but no OT wage is provided in E.c.6a

6. Basic Wage Rate Paid *		6a. Overtime Wage Rate Paid \$	
From: \$ <input type="text"/> . <input type="text"/> *	To: \$ <input type="text"/> . <input type="text"/>	From: \$ <input type="text"/> . <input type="text"/>	To: \$ <input type="text"/> . <input type="text"/>



TIP: If E.d.3 indicates “Yes”, then E.c.6a must list an OT wage



3. Overtime Available: Overtime hours will be available to the worker under this job offer and payable for every hour worked at the rate disclosed in this application. *	<input type="checkbox"/> Yes <input type="checkbox"/> N/A
--	---



Incomplete or Improperly Filed Form ETA-9142C

Appendix C errors:

- Only one page of the Appendix C submitted.
- Section A filled out with employer point of contact information instead of agent or attorney information.
- Section B not signed by the employer.
- Signature date is not current
 - Example: Application filed on April 1, 2023, but Appendix A is signed and dated December 2022.

★ **TIP:** Appendix C must be printed, signed and dated by the employer, then scanned and uploaded to the application as a PDF.



Inconsistencies Between the JVA and ETA-9142C

Many applications are denied due to discrepancies between the 9142C and the JVA. When running advertisement after a Notice of Acceptance is issued, employers must *ensure that all information in the JVA is consistent with the 9142C.*

- Provisions such as transportation, tools, housing marked “Yes” on 9142 but “None” on JVA, or vice versa.
- Inconsistent educational and/or experience requirements between 9142 and JVA.
- Dates of Need inconsistent.
- Offered Wage & OT inconsistent.
 - **Note:** Another common deficiency is overtime wage written as \$1.5 on JVA instead of dollar amount.
- Pay frequency inconsistent between 9142C and JVA.
- Inconsistent experience requirements, training requirements, and special requirements (additional requirements on JVA not present on 9142, or vice versa).
- Inconsistent number of workers.
- Work hours inconsistent between 9142C and JVA (35 vs 40 per week).



Inconsistencies Between the JVA and ETA-9142C

EXAMPLES:

- 9142C: Tools provided



Employer-Provided Tools and Equipment [E.d.5] **Yes**

- JVA: No Tools



Required tools, supplies and Equipment to be provided (enter none, if none) **none**

- 9142C: Frequency of pay is bi-weekly.



Pay Range [E.c.7] Hour Frequency of Pay [E.c.8] **Biweekly**

- JVA: Frequency of pay is bi-monthly



Hours per Week 40
Hours per Day 8
Payment Frequency **BI MONTHLY**
Overtime Available No

- 9142C High School/GED required
- Experience required is 24 months (two years).



Education [E.b.8] **High School /GED** Training Months [E.b.9] 0 Experience Months [E.b.10] **24**

- JVA High School? No
- 1-2 years experience required *This means that one year is the minimum acceptable.



High School Diploma Required? **No**
Qualification Requirements: **1 TO 2 YEARS EXPERIENCE IN MECHANIC JOB ABLE TO USE PRECISION MEASURING INSTRUMENT, AND POWER MACHINE AND HAND TOOLS / DISASSEMBLE ENGINE AND OTHER MECHANICAL PARTS / ABLE TO TROUBLE SHOOT ENGINE AND MOTOR FOR VARIOUS VEHICLES.**



Inconsistencies within the JVA

Many submitted JVAs also show internal inconsistencies. The following are common discrepancies:

- Education requirement in one section differs from education requirement listed in descriptive paragraphs.
- Number of workers differ between the line item and the descriptive paragraphs.
★ **TIP:** Leave these items out of your descriptions and narratives.
- Transportation will say “No”, but in the Comments section, employer explains that it provides transportation to worksite or that a company vehicle will be provided.
- Overtime says “No”, but an Overtime Wage Rate is listed beneath it.

Key takeaway: *Proofread the submission and ensure all information in the JVA and in the ETA-9142C is internally consistent within each document, and consistent between the two documents.*



Common Issues in Recruitment Report

Most common issues:

- Contact information not provided for all applicants.
- Final disposition for all applicants not provided.
- Employer did not provide the specific dates of the postings and/or JVA posting.
- Employer did not clearly state that the posting was up in two conspicuous locations.
- Missing statement regarding whether or not the employer had former employees to contact, and, if so, the final disposition of that contact.
- The means and dates of contacting former employees not provided when applicable.
- Contradictory information- employer states no applicants in the recruitment report but the JVA shows there were applicants.

 **TIP:** Employers should review the instructions in the NOA and make sure their recruitment report includes all the required information.



Common Issues in Recruitment Reports

- Many employers submit photos of their postings with their recruitment report. Sometimes these photos show that the actual Form ETA-9142C was not posted, but instead a 'help wanted' notice was posted.

CW-1 regulations require that the actual Form ETA-9142C be posted in two conspicuous locations.



End of the Presentation

THANK YOU