

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
Wildfires in Hawaii
Frequently Asked Questions
August 18, 2023

COMMUNICATION

1. How will the Office of Foreign Labor Certification’s (OFLC) National Processing Centers (NPC) communicate with employers and their authorized attorneys or agents affected by the wildfires in Hawaii?

OFLC will continue to contact employers and their authorized attorneys or agents primarily using email and – where email addresses are not available – will use U.S. mail. Employers are reminded to routinely check their email for information related to their OFLC applications. Further, OFLC reminds stakeholders that email addresses used on applications must be the same as the email address regularly used by employers and, if applicable, their authorized attorneys or agents; specifically, the email address used to conduct their business operations and at which the employers and their authorized attorneys or agents are capable of sending and receiving electronic communications from OFLC related to the processing of applications. If an employer is impacted by internet and power outages, employers may contact OFLC using the phone numbers listed below.

If the U.S. Postal Service or private courier services delay or discontinue delivery of U.S. mail to certain areas affected by the wildfires in Hawaii, OFLC’s NPCs will not send correspondence to geographic areas where there is either no mail service or partial mail service, as shown on the [Service Alerts](#) page of the U.S. Postal Service website. Normally, when correspondence related to the processing of applications must be sent by U.S. mail, OFLC uses the mailing address for the employer and, if applicable, the authorized attorney or agent named on the application. If a geographic area has no or partial U.S. mail delivery and no planned restoration date, OFLC will then contact employers and their authorized attorneys or agents via email, if that information is disclosed on the application, to arrange for the delivery of correspondence using alternate delivery services or to a mailing address not affected by mail delivery disruptions.

2. How should employers and/or their authorized attorneys or agents provide updated contact information to OFLC when their business operations are temporarily affected by the wildfires in Hawaii?

OFLC understands that some employers and/or their authorized attorneys or agents may take necessary precautions due to the wildfires in Hawaii, such as temporarily closing offices or requiring employees to telework, and will need to update their contact information to ensure receipt of correspondence related to an application. In these circumstances, employers and/or their authorized attorneys or agents should contact the applicable OFLC NPC using the information provided below. **For each of OFLC’s programs, the most**

effective means of communicating with OFLC is through the established Foreign Labor Application Gateway (FLAG) or the PERM Case Management System (“PERM system”) and should be used whenever possible. In the event an employer or its authorized attorney or agent is unable to communicate with OFLC through FLAG or the PERM system, alternative methods of contacting OFLC regarding each of OFLC’s programs appears below.

Prevailing Wage Programs: General questions related to the processing of applications for prevailing wage determination, requests for extensions in replying to Requests for Information and other official correspondence, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC National Prevailing Wage Center using the following contact methods:

Email: FLC.PWD@dol.gov
Include the phrase “Hawaii Wildfires” followed by the full case number in the email subject line.

Phone: 202-693-8200

H-2A, H-2B, and CW-1 Temporary Visa Programs: General questions related to the processing of applications, requests for extensions in replying to audits and other official correspondence, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC Chicago NPC using the following contact methods:

Online: For pending applications, please access your [Foreign Labor Application Gateway](#) (FLAG) System account and upload a change request or responsive document using the “Ad Hoc Document” function for the specific application.

Email: TLC.Chicago@dol.gov
Include the phrase “Hawaii Wildfires” followed by the full case number in the email subject line.

Phone: 312-886-8000

H-1B, H-1B1, and E-3 Temporary Visa Programs: General questions related to the processing of applications and changes of contact information (email address, phone number) should be directed to the OFLC Atlanta NPC using the following contact methods:

Online: For pending applications, please access your [Foreign Labor Application Gateway](#) (FLAG) System account and upload a change request or responsive document using the “Ad Hoc Document” function.

Email: LCA.Chicago@dol.gov
Include the phrase “Hawaii Wildfires” followed by the full case number in

the email subject line.

Phone: 404-893-0101

Permanent Labor Certification Program (PERM Program): General questions related to the processing of applications, requests for extensions related to audits and supervised recruitment instructions, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC Atlanta NPC using the following contact methods:

Online: For changes of address, phone number, or email address, etc. please access your [Foreign Labor Application Gateway \(FLAG\)](#) System account, or [PERM system](#) account via the **Helpdesk Inquiry module** via the “My Account” tab, or by modifying the Form ETA-9089.

Email: PermHurricane@dol.gov or, for Business Existence Registration extensions or PIN/password resets, BE.RFI.Atlanta@dol.gov. Include the phrase “Hawaii Wildfires” followed by the full case number in the email subject line.

Phone: 404-893-0101

DEADLINE / TIMEFRAME FLEXIBILITY

3. Will OFLC permit requests for extensions to deadlines or make other reasonable accommodations for employers and/or their authorized attorneys or agents impacted by the wildfires in Hawaii?

Yes. OFLC recognizes that the wildfires in Hawaii may have a significant impact on businesses and understands that some employers and/or their authorized attorneys or agents may not be able to timely respond to OFLC requests for information and other correspondence regarding the processing of applications or comply with applicable deadlines. Accordingly, OFLC will grant extensions of time and deadlines for employers and/or their authorized attorneys or agents affected by the wildfires in Hawaii, including for delays caused by the wildfires in Hawaii and those that occurred as a result of businesses preparing to adjust their normal operations due to the wildfires in Hawaii.

Prevailing Wage, H-2A, H-2B, CW-1, and PERM Programs – Response Deadline Extension:

OFLC will make accommodations related to deadlines for employers and their authorized attorneys or agents impacted by the wildfires in Hawaii to respond to the applicable OFLC NPC. Extensions will be granted for any request for information issued by OFLC containing a response deadline regarding the processing of applications for prevailing wage determinations and labor certification, including requests for audit documentation, a

response to a Notice of Deficiency, submissions of recruitment reports, business verification and sponsorship documentation, supervised recruitment, and requests for reconsideration of a PWD.

If the specific deadline falls during the 90-day period from August 21, 2023], the employer’s submission will be considered timely if received by the appropriate Center by November 14, 2023.

PERM Program – Filing Date Extension:

Under [20 CFR 656.17\(e\)](#), employers are required to begin their recruitment efforts no more than 180 days before filing an *Application for Permanent Labor Certification* (Form ETA-9089), and to complete most recruitment measures at least 30 days before filing. Employers who have already completed the recruitment steps during the required 180-day timeframe and are capable of filing their application(s) under existing regulatory requirements despite the impact of the wildfires in Hawaii should do so. However, OFLC understands that some employers may be delayed from completing these requirements and/or submitting the Form ETA-9089 within this 180-day timeframe requirement due the impact of the wildfires in Hawaii. Therefore, provided that the employer initiated its recruitment within the 180 days preceding August 21, 2023, OFLC will accept recruitment completed within 60 days after the regulatory deadlines to provide employers with sufficient time to complete the mandatory recruitment and file their PERM applications.

Note: The extension applies only to areas for which a “major disaster declaration” has been made with respect to the wildfires in Hawaii. Major disaster declarations may be amended or newly declared, so employers, agents, and attorneys should continue to monitor the FEMA website for updates for their state. These extensions apply even if the employer, attorney, or agent has relocated and resumed operations outside the disaster area. The list of counties, parishes, and territories designated by FEMA as major disaster areas eligible for Individual or Public Assistance as a result of the wildfires in Hawaii is available at <https://www.fema.gov/locations/hawaii>.

4. Can an employer or its authorized attorney or agent, who is impacted by the wildfires in Hawaii request an extension of time related to appeals of OFLC actions?

Requests for an extension of time related to appeals of OFLC actions should be directed to the presiding administrative or judicial authority, including the Department’s Office of Administrative Law Judges (OALJ) for appeals of agency denials of labor certifications, debarments, revocations, or other agency actions related to the labor certification. For more information concerning OALJ operations, please visit <https://www.dol.gov/agencies/oalj/> .

5. Will OFLC permit further deadline flexibility—beyond the dates in this the wildfires in Hawaii guidance—for employers and/or their authorized attorneys or agents who continue to be impacted by the wildfires in Hawaii?

For the hardest hit areas, OFLC will closely monitor events and may further extend these deadlines.

6. Will OFLC permit deadline flexibility for employers and/or their authorized attorneys or agents who are not in a FEMA-designated “major disaster” area but are impacted by the wildfires in Hawaii?

OFLC may extend deadline flexibility to employers and/or their authorized attorneys or agents who are outside a FEMA-designated “major disaster” area but are impacted in such a way as to affect their ability to meet OFLC deadlines. Such employers and/or attorneys or agents may submit a written request for extension flexibility, following the communication procedures in a separate Frequently Asked Question in this guidance.

OFLC will evaluate such requests on a case-by-case basis. Until OFLC notifies such employers, attorneys, and agents that they are eligible for deadline flexibility under this guidance, they should make every effort to meet all applicable OFLC deadlines.

7. What should employers and/or their authorized attorneys or agents do if they receive correspondence from OFLC with a deadline they cannot meet due to the impact of the wildfires in Hawaii and/or that is inconsistent with this guidance?

Such employers and/or attorneys or agents should contact OFLC using the communication procedures in a separate Frequently Asked Question in this guidance. OFLC will work with stakeholders covered by an extension, as provided in this guidance, who may receive written communications applying an earlier deadline or a deadline that differs from this guidance.

H-1B, H-1B1, and E-3 Programs

8. Due to the impact of the wildfires in Hawaii, an employer may need to move my H-1B, H-1B1 and/or E-3 visa workers to worksite locations unintended at the time it submitted the LCA for processing by OFLC. Under what conditions is an employer permitted to move such workers to new worksites?

An employer with an approved Form ETA-9035/9035E, Labor Condition Application (LCA) for Nonimmigrant Workers, may move an H-1B, H-1B1, or E-3 worker to other worksite locations which were unintended at the time of filing the LCA, without needing to file a new LCA, provided that the worksite locations are within the same area of intended employment covered by the approved LCA and the move does not include a change in the material terms and conditions of employment.

An employer with an approved LCA may also move **H-1B workers** to unintended worksite locations outside of the area(s) of intended employment on the LCA within the parameters

of the short-term placement provisions, without needing to file a new LCA, provided that the move does not include a change in the material terms and conditions of employment. *See* [20 CFR 655.735](#). ***As the short-term placement provisions only apply to H-1B workers, an employer would have to file a new LCA before placing an H-1B1 or E-3 worker at a new worksite outside the area(s) of intended employment on the LCA.***

Reminders:

Notice – The employer must provide either electronic or hard copy notice at any new worksite locations meeting the notice content requirements. *See* [20 CFR 655.734\(a\)](#). Notice is required to be provided on or before the date any worker on an H-1B, H-1B1, or E-3 visa employed under the approved LCA begins work at the new worksite locations.

Working Conditions – Employers attest on the Form ETA-9035/9035E, section G(2), that the employment of H-1B, H-1B1 or E-3 nonimmigrant workers in the named occupation will not adversely affect the working conditions of similarly employed U.S. workers, and that nonimmigrant workers will be afforded working conditions on the same basis, and in accordance with the same criteria, as offered to U.S. workers similarly employed. *See* [20 CFR 655.732](#). This means that if an employer offers its foreign workers the flexibility to telework from their home that is within the area of intended employment, for example, the employer must offer the same flexibility to its U.S. workers similarly employed. Alternatively, if the employer is offering to move a foreign worker to a new location outside of the area of intended employment, the employer must offer the same option to its U.S. workers similarly employed.

Material Changes to Terms and Conditions – Depending on the flexibility offered, an employer may be required to file a new LCA (*e.g.*, where the flexibility offered constitutes a change to the material terms and conditions of the original LCA) or, although not technically required, an employer may wish to file a new LCA to cover new worksite(s) and flexibilities offered. It is important to note that if the move includes a material change in the terms and conditions of employment, the employer may need to file an amended petition with the U.S. Citizenship and Immigration Services.

Questions/Complaints – Workers or employers who have questions, or would like to file complaints with the Wage and Hour Division (WHD) should visit <https://www.dol.gov/whd/> or call 1-866-487-9243. Callers will be directed to the nearest WHD office for assistance. WHD staffs offices throughout the country with trained professionals who have access to interpretation services to accommodate more than 200 languages. Specific information on how to file a complaint is available on WHD’s website. All assistance from WHD is free and confidential.

9. What are the parameters of a short-term placement of an H-1B worker at a worksite outside the area(s) of intended employment on the LCA?

The conditions for short-term placement of an H-1B worker are fully discussed in the H-1B

regulations at [20 CFR 655.735](#) and summarized as follows:

- The employer is in compliance with wages, working conditions, strike requirements, and notice for worksites covered by the approved LCA;
- The employer's short-term placement is not at a worksite where there is a strike or lockout;
- For every day the H-1B worker is placed outside the area of intended employment, the employer continues to pay the required wages; and
- The employer pays lodging costs, costs of travel, meals, and expenses (for both workdays and non-workdays).

Under the short-term placement provisions, an employer may place the H-1B worker at the new worksite location for up to 30 workdays in one year and, in certain circumstances, up to 60 workdays in one year. Employers will need to determine, on a case-by-case basis, whether the 30-workday and/or 60-workday provisions may apply. Employers should be aware that, if the worker's place of residence is outside the area of intended employment, the 60-workday provision would not apply. *The short-term placement provisions only apply to H-1B workers, an employer would have to file a new LCA before placing an H-1B1 or E-3 worker at a new worksite outside the area(s) of intended employment on the LCA.*

10. I intend to file an LCA for the H-1B, H-1B1, or E-3 program, and I cannot provide a hard-copy notice of the LCA filing due to the wildfires in Hawaii. How do I provide notice of the LCA filing?

On or within 30 days before the date of an LCA filing, employers must provide notice of the LCA filing to its employees in the occupational classification in the area(s) of intended employment. Where a bargaining representative exists, the employer must provide notice of the LCA filing to the bargaining representative.

In the absence of a bargaining representative, the employer may provide hard copy or electronic notice to its employees, which must be available to employees for 10 calendar days. The hard-copy notice must be posted in two conspicuous locations at each worksite (or place of employment), which may not be possible under these circumstances. However, the regulations allow employers to provide electronic notice of an LCA filing, instead of hard-copy notice. For electronic notice, employers may use any means ordinarily used to communicate with its employees about job vacancies or promotion opportunities, including its website, electronic newsletter, intranet, or email. If employees are provided individual direct notice, such as by email, notification is only required once and does not have to be provided for 10 calendar days.

The notice must be readily available to the affected employees. The notice must also contain the required content and comply with the notice provisions of [20 CFR 655.734](#). The employer must document and retain evidence of the notice that it provided in its public access file in accordance with [20 CFR 655.760](#). Further, the employer must provide a copy

of the certified LCA to the H-1B, H-1B1, or E-3 worker(s) no later than the date the nonimmigrant worker reports to work at the worksite location.

PERM Program

11. I am an employer seeking to submit an Application for Permanent Employment Certification (Form ETA-9089). Due to the impact of the wildfires in Hawaii, I may need to temporarily close my offices or shift business operations to partial or full-time telework. How will my decision affect the requirement to post the Notice of Filing (NOF) under the Department’s regulations?

Under [20 CFR 656.10\(d\)](#), the NOF must be posted for at least 10 consecutive business days and completed at least 30 days before the date on which the employer submits the Form ETA-9089. While the NOF is not part of the required recruitment activities, in [20 CFR 656.10\(d\)\(3\)\(iv\)](#), it must be posted during the same period of time as the employer conducts its recruitment efforts; that is between 180 days and 30 days before filing the Form ETA-9089. Accordingly, similar to the accommodations for recruitment activities due to the wildfires in Hawaii, OFLC will also accept NOFs posted within 60 days after the deadlines have passed in order to provide sufficient time for employers to file their applications, provided the employer initiated its recruitment within the 180 days preceding the President’s major disaster declaration on August 10, 2023.

H-2A, H-2B, CW-1 Programs

12. Due to the impact of the wildfires in Hawaii, I no longer have a business need for the workers employed under the temporary labor certification I received. What do I do?

Employers who received temporary labor certification under the H-2A, H-2B, or CW-1 visa programs may request approval from the OFLC Chicago NPC Certifying Officer to terminate work under the job order and/or work contracts before the end date of work due to the impact of the wildfires in Hawaii. An employer may submit a request for “contract impossibility” to the Chicago NPC Certifying Officer using the following method:

Email: TLC.Chicago@dol.gov
Include the phrase “Hawaii Wildfires” followed by the full OFLC case number in the email subject line.

Phone: 312-886-8000

Important Reminders:

- An employer continues to be responsible for its obligations under the work contract until receiving a favorable “contract impossibility” determination from the Certifying Officer.
- In the event that the Certifying Officer makes a finding of contract impossibility, the employer should document its efforts to comply with each aspect of the contract

impossibility provision under the regulatory requirements applicable to the H-2A ([20 CFR 655.122\(o\)](#)), H-2B ([20 CFR 655.20\(g\)](#)), or CW-1 ([20 CFR 655.423\(g\)](#)) visa programs.

13. Due to wildfires in Hawaii, my business has a critical need for H-2A workers to perform agricultural labor or services. However, I do not have sufficient time to prepare all required documentation in order to file a completed job order with the State Workforce Agency (SWA) and H-2A application with OFLC within the regulatory filing timeframes. Can I file an emergency H-2A application with OFLC?

Yes. Under [20 CFR 655.134](#), the OFLC Certifying Officer may waive the time period for filing for employers who did not make use of temporary agricultural workers during the prior year's agricultural season or for any employer that has other good and substantial cause, provided that the Certifying Officer has sufficient time to test the domestic labor market on an expedited basis to make the determinations required by [20 CFR 655.100](#). Good and substantial cause may include the substantial loss of U.S. workers due to weather-related activities or similar unforeseeable catastrophic events affecting the work activities to be performed. Therefore, for employers whose business operations are impacted by wildfires in Hawaii, OFLC may consider this situation to qualify as good and substantial cause and, if these employers are unable to meet the regulatory filing timeframes, they should request a waiver of the regulatory filing timeframe for this reason under [20 CFR 655.134](#).

An employer that requests a waiver of the regulatory filing timeframe must submit a statement describing the good and substantial cause necessitating the waiver request, a completed *Application for Temporary Employment Certification* (Form ETA-9142A and appendices), a completed *H-2A Agricultural Clearance Order* (Form ETA-790/790A and addendums), and all applicable documentation meeting the requirements of 20 CFR 655.130-133. See [20 CFR 655.134\(b\)](#). Upon receipt of a complete waiver request, the Certifying Officer will review the request and transmit a copy of the job order to the SWA serving the area of intended employment. The SWA will review the contents of the job order for compliance with the requirements set forth in [20 CFR part 653, subpart F](#), and [20 CFR 655.122](#). See [20 CFR 655.134\(c\)\(1\)](#).

Important Note: Employers and their authorized attorneys or agents must electronically prepare and file emergency H-2A job orders and applications using the OFLC [FLAG](#) system. See [20 CFR 655.130\(c\)](#). However, under the regulations at 20 CFR 655.130, employers that lack adequate access to electronic filing, including as a result of the impact of the wildfires in Hawaii, may file by mail. To do so, the employer must indicate it is filing by mail due to lack of adequate access to electronic filing and mail its application to the following address: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210.

14. I am an employer with a pending H-2A application and job order, and the housing I intend to provide to workers requires an inspection from the Hawaii SWA. What should I do in the event that the Hawaii SWA temporarily closes its public offices or suspends operations due to the impact of the wildfires in Hawaii?

In the event that the SWA provides notification that it has or will fully suspend all operations due to the impact of the wildfires in Hawaii, employers should be aware that this might prevent or significantly delay the issuance of a final determination on their H-2A applications and job orders. A certification that housing meets applicable safety and health standards is a prerequisite for the Certifying Officer to grant H-2A temporary labor certification.

15. The housing certified for workers is no longer available or cannot be used due to the impact of the wildfires in Hawaii, can I use other housing that was not initially disclosed in the H-2A job order?

If certified housing becomes unavailable for reasons outside the employer's control, such as the impact of the wildfires in Hawaii, the employer may substitute other rental or public accommodation housing that is in compliance with the local, State, or Federal housing standards applicable under 20 CFR part 655.122(d). The employer must promptly notify the SWA in writing of the change in accommodations and the reason(s) for such change, and provide the SWA with evidence of compliance with the requirements of 655.122(d) for the substituted housing.

If, upon inspection, the SWA determines the substituted housing does not meet the applicable housing standards, the SWA will provide written notification to the employer to cure the deficiencies with a copy to the Certifying Officer. An employer's failure to provide housing that complies with the applicable standards may result in revocation of the H-2A temporary agricultural labor certification. See [20 CFR 655.122\(d\)\(6\)\(iv\)](#).

15. Can H-2A workers and workers in corresponding employment perform debris removal and other clean-up duties resulting from the wildfires in Hawaii even where these duties were not disclosed in the H-2A job order?

Due to the unforeseen/uncontrollable nature of the employer's circumstance, H-2A workers and workers in corresponding employment may perform duties related "clean-up" on farms (clearing land of brush and other debris) even if such duties are not specifically listed in the job order, provided that the work constitutes "agricultural labor or services," and is limited to the area of intended employment certified.

Additionally, work performed outside the area of intended employment on the certified *Application for Temporary Employment Certification* issued by the Department is not permitted.

16. Some worksites listed on my certified *Application for Temporary Employment Certification* and job order can no longer support employment due to the unforeseen impact of the wildfires in Hawaii. However, I have work at other worksites within the certified area of intended employment where work can be performed. Can I place workers at other worksites not specifically listed in the certified *Application for Temporary Employment Certification* but are still within the same area of intended employment?

Yes. A certified *Application for Temporary Employment Certification* is valid only for the number of H-2A positions, the area of intended employment, the job classification and specific services or labor to be performed, and the employer(s) named on the certified application, including any approved modifications. Due to the impact of the wildfires in Hawaii, the Department will permit an employer to place H-2A workers and workers in corresponding employment at additional worksites not previously disclosed on the certified H-2A application, only as necessary due to the hurricane, if such worksites are within the same area of intended employment certified by the Department.

For worksites that are outside of the certified area of intended employment and where the impact of the wildfires in Hawaii constitutes good and substantial cause, the employer may file a new application under the Department's regulations for emergency situations at [20 CFR 655.134](#). A new application ensures that critical protections such as housing, transportation, and meals will be provided to all workers performing work at the worksites, which are not covered by the certified H-2A application and job order.

17. Due to the impact of the wildfires in Hawaii, my workers may not be able to work for many weeks or months. May I invoke contract impossibility?

An employer who cannot offer work for many weeks or even months due to an Act of God or other unforeseen events may request the Certifying Officer's approval to invoke the contract impossibility provision, in accordance with the Department's regulations at [20 CFR 655.122\(o\)](#).

Important Reminder: Employers who employ both H-2A workers and workers in corresponding employment and, due to an Act of God, no longer require the services of all of the workers must prioritize retention of the workers in corresponding employment. An employer cannot dismiss or otherwise state there is "no work available" for workers in corresponding employment while retaining H-2A workers.

18. May I accommodate different arrival times for my workers due to the impact of the wildfires in Hawaii, different from the start date on my certified *Application for Temporary Employment Certification* and job order?

Yes. Absent amendments approved by the Certifying Officer under [20 CFR 655.145](#), the Department considers the certified start date of work to represent the first date of need for all workers, not just some workers. This certified start date is a critical element in the

recruitment of U.S. workers both before foreign workers depart for the place of employment and through 50 percent of the work contract period. However, the Department recognizes an employer may have a need for greater flexibility in beginning work for some or all of their workers due to the impact of the wildfires in Hawaii. Therefore, the Department is waiving the need for employers to obtain formal approval from the Certifying Officer for minor amendments to the start date of work to accommodate the arrival of workers at different times in this temporary, unique circumstance. This waiver includes the need for employers to “move up” their start dates of work in the event workers are needed earlier than expected due to the impact of the wildfires in Hawaii.