

Hurricanes Harvey and Irma Guidance

Question: Will the Office of Foreign Labor Certification (OFLC) allow for extensions of response deadlines or other reasonable accommodations addressed below in light of the damage done by Hurricanes Harvey and Irma?

Answer: Yes. We recognize that Hurricanes Harvey and Irma generated significant damage to businesses in the Texas Gulf Coast area, Southwestern Louisiana, Florida, and other states. OFLC has established internal procedures that recognize, as a result of the storms, employers and/or their representative(s) may not be able to timely respond to a request for information or documentation, such as an audit, etc. Accordingly, OFLC will extend the time to respond for employers affected by the storms. Extensions will be granted for issues that arise from storm-related conditions, including delays caused as a result of the storms, as well as those delays that may have occurred as a result of storm preparations in the week before each storm.

Mail delivery. Currently, the U.S. Postal Service and other delivery services are not delivering mail to certain areas impacted by Hurricanes Harvey and Irma. Until further notice, National Processing Centers will not send correspondence by mail to zip codes in FEMA-declared major disaster counties affected by Hurricanes Harvey and Irma where there is either no mail service or partial mail service, as shown on the U.S. Postal Service website at <http://about.usps.com/news/service-alerts/resident-weather-updates.htm>.

Normally, copies of correspondence from OFLC regarding applications are sent to both the employer and the legal representative named on the application. OFLC will continue processing every case to the extent feasible. Because some areas have no or partial mail delivery and no planned restoration date, OFLC will contact employers or their representatives via email or telephone, if that information is contained in the application file, to arrange for delivery of certifications via alternate delivery services or to an address unaffected by postal interruptions. OFLC also encourages employer representatives or employers to proactively provide updated contact information to the appropriate processing center using the email addresses and or telephone numbers listed below.

Email delivery. OFLC will continue to contact employers, attorneys, and agents by email under current procedures, but OFLC recognizes that internet access and cellular coverage may not be available in areas impacted by Hurricanes Harvey and Irma. The employer, attorney, or agent may respond if it is able to do so. If it is unable to respond immediately, OFLC will extend the time for response.

For information on due dates in response to OFLC requests, please see the relevant section below.

Advising OFLC of new mailing addresses and contact information. Because some employers and/or their attorneys may be relocating from disaster-impacted areas on a temporary or permanent basis, employers or their attorneys are asked to contact the Center handling the case as follows:

- Any questions, requests for extensions in replying to audits and other Center requests, changes of address, phone number, or email address, etc. from the OFLC Chicago National Processing Center related to **H-2A Temporary Agriculture Program, H-2B Temporary Nonagricultural Program, or H-1B Specialty Occupations Program**, please use the following e-mail:

- TLC.chicago@dol.gov
- Subject: **Hurricanes Harvey and Irma** or telephone the Center at (312) 886-8000

- Any questions, requests for extensions, changes of address, phone number, or email address, etc. related to the issuance of a **prevailing wage determination** from OFLC's National Prevailing Wage Center, please use the following e-mail:

- FLC.PWD@dol.gov
- Subject: **Hurricanes Harvey and Irma** or telephone the Center at (202) 693-8200

NOTE: The prevailing wage validity period will not be changed or extended.

- Any questions, requests for extensions, changes of address, phone number, or email address, etc. related to responding to audits, supervised recruitment instructions, including draft advertisements, etc. related to the **Permanent Labor Certification Program (PERM)**, please use the following e-mail:

- PermHurricane@dol.gov
- Subject: **Hurricanes Harvey and Irma** or telephone the Center at (404) 893-0101

Changes to point of contact information. Due to Hurricanes Harvey and Irma, OFLC will accept changes to employer, agent, or attorney point of contact information.

Due dates. To address Hurricanes Harvey and Irma, OFLC provides the information below to clarify the applicability of due date deadline extensions.

For applications in the H-2A, H-2B and PERM programs, and requests for Prevailing Wages, where either the employer or its attorney or agent is located in a Hurricane Harvey or Irma major disaster area (the counties and parishes that have been or are later designated by the Federal Emergency Management Agency (FEMA) as disaster areas eligible for Individual or Public Assistance), OFLC is postponing certain regulatory and procedural deadlines. Specifically, OFLC is extending deadlines for employer responses to ANPC, CNPC, and NPWC-issued audit requests, requests for additional information, requests for reconsideration, and similar requests that have deadlines. Extensions of time to appeal either (1) agency denials of labor certifications, debarments, revocations or other agency actions related to the labor certification to the Office of Administrative Law Judges, or (2) adverse final agency actions on such matters to a federal court, must be made in each case to the presiding authority.

For Hurricane Harvey: If the specific deadline falls during the period from, August 25, 2017 until December 1, 2017, the employer's submission will be considered timely if received by the appropriate Center by December 1, 2017.

For Hurricane Irma: If the specific deadline falls during the period from, September 8, 2017 until December 15, 2017, the employer's submission will be considered timely if received by the appropriate Center by December 15, 2017.

These extensions apply even if the employer, attorney, or agent has relocated and resumed operations outside the disaster area. The list of counties and parishes designated by FEMA as major disaster areas eligible for Individual or Public Assistance as a result of Hurricanes Harvey and Irma is available at <https://www.fema.gov/disasters/>.

Note: The extension to December 1 or 15 applies only to areas for which a "major disaster declaration" has been made with respect to Hurricanes Harvey and Irma. 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.

For the hardest hit areas, OFLC will closely monitor progress and may extend these deadlines even further. OFLC will work with stakeholders covered by an extension provided above who may receive written communications applying an earlier or incorrect deadline. OFLC will consider requests for other deadline extensions, including those located outside of a FEMA-designated "major disaster" area but who are otherwise affected by Hurricanes Harvey or Irma, on a case-by-case basis.

Filing Date Extensions for PERM applications impacted by Hurricanes Harvey and Irma.

Under current PERM regulations, employers must begin their recruitment efforts no more than 180 days prior to filing a permanent labor certification application, and they must complete most recruitment measures at least 30 days prior to filing. Due to Hurricanes Harvey and Irma, employers or their attorneys within a FEMA-designated major disaster area may be unable to comply with the requirement of completing their recruitment efforts within the regulatory 180-day time frame. Therefore, OFLC is extending recruitment validity periods by ninety (90) days to allow employers or their attorneys located within a FEMA-designated major disaster area (as defined above) to file their permanent labor certification application, so long as recruitment was begun within 180 days prior to the applicable hurricane.

For Hurricane Harvey: Recruitment must have begun by February 27, 2017, and the filing must occur by December 1, 2017.

For Hurricane Irma: Recruitment must have begun by March 14, 2017, and the filing must occur by December 15, 2017.

If an employer wishes to submit an application under this guidance, where the recruitment period lasted longer than 180 days, it must notify the Atlanta National Processing Center with a signed

letter explaining why each particular application qualifies under this guidance, through one of the following methods:

- Upload the signed letter to the case file in the PERM system
- Email the signed letter to PermHurricane@dol.gov

H-2A and H-2B contract impossibility and emergency filing. H-2A or H-2B employers affected by the hurricanes may request permission from the Chicago National Processing Center Certifying Officer to terminate work to be performed under the job order and/or work contracts with employees before the end date of work on the certification under the “contract impossibility” provisions found in the regulations at 20 C.F.R. 655.122(o) (H-2A) and 20 C.F.R. 655.20(g) (H-2B), and discussed in the Department’s FAQs available [here](#). Impacted employers may also be eligible to use emergency filing procedures, as outlined at 20 C.F.R. 655.134 (H-2A) and 20 CFR 655.18 (H-2B), to file their application closer to their start date of need than is normally permitted. The Chicago National Processing Center Certifying Officer will take into account the employer’s reasons for such requests and whether work covered by the certification is within a major disaster area.