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Client Alert: The U.S. Department of Labor Wants to Overhaul Permanent Labor Certification: Here Is What Employers Need to Know

SERVICE LINE

Labor & Employment

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On November 17, 2026, the U.S. Department of Labor (DOL) proposed the biggest rewrite of the Permanent Labor Certification (PERM) labor-certification program since it began in 2005. If adopted as written, the rule would make green-card sponsorship slower, costlier, and riskier for many employers, with longer recruiting, heavier filings, a two-year layoff bar, and no fast track for nurses and physical therapists.

For now, it is only a proposal, and current PERM rules still apply. However, employers should start planning now, because the changes could affect cases you begin in 2027.

What Would Change

Topic	Today	Under the Proposal
Recruiting methods	Two Sunday newspaper ads, a 30-day state job order, and three more steps for professional jobs.	No print ads. A state job order, your website, at least one job board, social media you normally use, and at least one job fair, campus event, or school placement office. One set of rules for professional and nonprofessional jobs.
Recruiting length	30 days at minimum.	At least 90 days or longer if you normally advertise similar jobs longer.

Topic	Today	Under the Proposal
Filing timing	File within 180 days after recruiting begins.	Finish recruiting 30 to 60 days before filing. Another provision says to file within 30 days after recruiting ends; DOL may need to clarify.
Evidence	Keep records; produce them only if audited.	Submit the recruitment report, every U.S. applicant's resume, and proof of all recruiting with the application.
Layoffs	Six-month look-back; you may file if you notify and consider laid-off workers.	Flat bar on filing after a layoff in the same or similar job at the worksite within two years, plus reporting duties after filing.
Schedule A	Nurses, physical therapists, and people of exceptional ability skip the labor-market test.	Schedule A eliminated. These cases go through full PERM.
Notice of Filing	Posted for 10 business days in the months before filing.	Posted from shortly before filing until the I-140 is approved, denied, or withdrawn — often for years, and at client worksites.

Five Changes That Matter Most

1. Recruiting will look like your normal hiring—and take three times as long.

Ads must state the offered wage or wage range. Applicants must be able to apply through your usual channels, not a PERM-only page. Interviews, if required, must be by phone or video, and the interviewer must be a U.S. worker who normally interviews for similar roles. Recruiting that is less open to U.S. workers is presumed to be in bad faith is an independent ground for denial and will be referred to the Department of Justice (and, where national-origin discrimination is indicated, the Equal Employment Opportunity Commission (EEOC)).

2. Filings will be heavier, and small errors will cost more.

Today, you attest and produce proof only if audited; under the proposal, you would file it up front. An incomplete application would be returned unprocessed, with no reconsideration or appeal and no preserved priority date.

3. A layoff could freeze your program for two years or longer.

Any layoff of U.S. workers in the same or a similar occupation at the place of employment during the prior two years would bar filing. Until the I-140 is decided, a later layoff would require notice to DOL (and, where relevant, U.S. Citizenship and Immigration Services (USCIS)) within five business days and an offer of the job to qualified laid-off workers, documented in an updated recruitment report. Given current processing times, these duties could last four years or more. Staffing and consulting firms face added limits when placing workers at client sites that had layoffs.

4. Schedule A goes away.

Hospitals and health systems sponsoring nurses and physical therapists, and employers sponsoring people of exceptional ability in the sciences or arts, would need full PERM before filing the I-140.

5. More personal accountability.

Employers would sign broader assurances under penalty of perjury. A false statement could lead to revocation, debarment, government referral, and criminal penalties. DOL is also asking whether fully remote jobs should be excluded from PERM altogether.

When Would This Take Effect?

DOL is taking public comments through January 19, 2027 (Docket No. ETA-2026-0133). A final rule could follow at any time after that. DOL proposes a 90-day transition (a 60-day delayed effective date plus 30 days): applications filed before day 90 after publication would stay under today's rules, and anything filed on or after day 90 would follow the new rules. Legal challenges are possible once a final rule issues.

What You Should Do Now

- Keep filing under the current rules. Consider moving ready cases forward rather than waiting, especially any Schedule A cases.
- Document how you normally recruit for each job family, how long you advertise, and whether your applicant tracking system captures PERM applicants.
- Record a lawful, job-related reason for every rejection.
- Consider filing a comment. Data from employers carries weight with DOL.

How We Can Help

Our Business Immigration team at Shumaker is following this rulemaking closely. We can review your sponsorship pipeline, flag cases to accelerate, assess your layoff exposure, update your recruiting practices, and help you prepare and file comments before January 19, 2027.

Contact Maria Ramos at 813.227.2252; Haley Kole at 813.676.7254; Oliva Johnson at 843.996.1948: or your usual Shumaker attorney. We will send updates as the rule moves forward.

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