

KPMG

GMS Flash Alert

Immigration

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United States – Proposed Rule for Modernizing the Labor Market Test

The U.S. Department of Labor (DOL) has released a proposed rule that would substantially revise the permanent labor certification process, known as the Program Electronic Review Management (PERM) system, used by employers sponsoring certain foreign national employees for employment-based permanent residence.

The proposal would eliminate Schedule A, lengthen recruitment periods, replace mandatory print advertisements with electronic recruitment, require additional documentation at filing, and expand protections for U.S. workers, including through stricter layoff restrictions. The proposed changes are not yet in effect and remain subject to a 60-day public comment period.[1]

WHY THIS MATTERS

The PERM process has remained nearly unchanged since 2005. If finalized, the proposal would be its most significant revision and could increase the time and administrative work required to complete the labor certification process.

Because most employment-based permanent residence cases, including all EB-3 and most EB-2 cases, require labor certification, the proposal could affect a broad range of sponsorship matters. Employers could need to begin sponsorship planning earlier, conduct recruitment for longer periods, submit more supporting documentation, and assess relevant layoffs before and after filing. PERM would also move from an attestation-and-audit model to one that requires supporting documentation at filing, with the DOL scrutinizing applications more closely. The proposed elimination of Schedule A could also require employers sponsoring professional nurses, physical therapists, and certain individuals of exceptional ability to complete the standard PERM process.

Foreign national employees could experience longer and less predictable permanent residence sponsorship timelines.

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Key Highlights

Elimination of Schedule A

The proposal would eliminate Schedule A, including:

- Group I: Professional nurses and physical therapists; and
- Group II: Certain individuals of exceptional ability in the sciences, arts, or performing arts.

Employers sponsoring positions currently covered by Schedule A would generally need to obtain a prevailing-wage determination, conduct recruitment, and file a PERM application with the DOL.

Schedule A currently allows these cases to bypass the labor market test, significantly shortening the timeline to permanent residence. Its elimination would remove all exceptions to the PERM labor market test.

Longer Recruitment Periods

The State Workforce Agency job order and specified electronic advertisements would generally need to remain active for at least 90 calendar days, compared with the current 30-day minimum.

If the employer customarily advertises the same or similar non-PERM positions for more than 90 calendar days, the longer customary period used during the preceding 12 months would apply.

The relevant recruitment activities would need to conclude between 30 and 60 calendar days before filing. The proposal describes the resulting filing period as one to 29 calendar days after the final applicable recruitment activity ends.

Electronic Recruitment Methods

The proposal would eliminate mandatory print-newspaper advertisements. Currently, employers sponsoring professional positions must post a 30-day State Workforce Agency job order, run two Sunday newspaper advertisements (with a professional-journal advertisement permitted in place of the second in certain cases), and complete three additional recruitment steps chosen from a list of 10 options. The proposal would instead standardize recruitment steps for both professional and non-professional positions, with limited exceptions.

Employers would generally recruit through:

- The applicable State Workforce Agency;
- The employer’s business website or websites;
- At least one independent job-search website; and
- A job fair, on-campus recruitment event, or college, university, or trade-school placement office.

Social-media advertising would be required if the employer customarily uses social media to recruit for positions in the same occupational classification.

Employers would also need to recruit at least as they customarily do for comparable non-PERM positions, using the methods most likely to reach the broadest pool of qualified U.S. workers. In particular:

- Job fairs, on-campus recruiting events, and placement offices: the advertisement would need to run through at least one of these methods while the State Workforce Agency job order is active, or through as many of them as the employer customarily uses for non-PERM recruitment;

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- Employer websites: the advertisement would need to appear in the location the employer customarily uses to recruit for the same occupational classification, or on all of its websites if it does not customarily use them for recruitment; and

- Job-search websites: the advertisement would need to appear on at least one site other than the employer's website or the State Workforce Agency, and on every job-search website the employer customarily uses for non-PERM positions in the same occupational classification.

Applicant Access and Interviews

Applicants would need to be able to apply through the employer's usual recruitment channels rather than PERM-specific channels, and those channels would need to be operational and monitored.

Interviews would need to be conducted by phone or virtually so that U.S. candidates incur little or no cost. The interviewer would need to be a U.S. worker who normally interviews candidates for comparable non-PERM positions.

Higher-Education and Professional Sports Recruitment

The proposal would retain and update the optional special recruitment procedures for college and university teachers, which can exempt employers from certain pre-filing recruitment steps, and would extend that treatment to professional athletes and professional sports team coaches.

Expanded Notice of Filing Requirements

The Notice of Filing would need to be posted 10 days before the PERM application is submitted and remain displayed until the later of the date the PERM application or Form I-140 petition is denied or withdrawn, or a related Form I-140 petition is approved by USCIS.

The proposal would eliminate the physical posting requirement in certain circumstances. Prominent electronic posting on an internal or external employer website that is readily accessible to all employees and customarily used for employee notices would satisfy the requirement, provided that the notice meets the regulation's content requirements.

The notice requirement would also extend to third-party worksites, regardless of whether the PERM employer owns or operates the third-party location.

Additional Documents Submitted at Filing

PERM currently operates as an attestation-and-audit system. Employers attest that they tested the labor market, offered the required wage, and found no able, willing, qualified, and available U.S. workers, but they do not submit supporting documentation unless the DOL audits the application. Under the proposal, employers would generally submit the following with the PERM application:

- The prevailing wage determination;

- The Notice of Filing;

- The recruitment report;

- Copies of advertisements and other recruitment records; and
- Resumes and/or applications from all U.S. workers who applied.

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The recruitment report would also identify the disposition of each U.S. applicant and the lawful, job-related reason for any rejection.

Expanded Wage and Job Disclosures

Recruitment materials would need to include the offered wage or wage range and additional information about:

- Job duties and minimum qualifications;
- Weekly working hours;
- Work locations;
- Remote, telework, or hybrid arrangements;
- Travel requirements;
- Overtime, if applicable;
- Full-time status; and
- The number of openings.

The offered wage would need to meet or exceed the highest applicable prevailing wage or federal, state, or local minimum wage.

Expanded Layoff-Related Restrictions

Currently, an employer that had a layoff in the same or a related occupation and the same area of intended employment within six months before filing must document that it notified all potentially qualified laid-off U.S. workers of the PERM job opportunity and considered those who applied.

Under the proposal, an employer generally could not file a PERM application if, during the preceding two years, it laid off a U.S. worker in the same or a similar occupation and relevant area of intended employment.

If a relevant layoff occurs after filing, the employer's obligations could continue through USCIS approval of the related Form I-140 petition or final resolution of the case.

The employer would generally need to:

- Notify the DOL, and USCIS if applicable, within five business days;
- Offer the position to potentially qualified laid-off U.S. workers; and
- Update its recruitment documentation.

Related restrictions would also apply to certain third-party staffing arrangements.

Remote, Telework, and Roving Positions

The proposal would establish specific worksite and disclosure requirements for remote, hybrid, roving, client-site, and third-party positions. Recruitment materials would need to identify applicable work arrangements and geographic limitations. The DOL is requesting comments on whether fully remote positions should remain eligible for PERM labor certification or be subject to additional restrictions.

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Anti-Discrimination Safeguards and Employer Attestations

The proposal would require employers to recruit in good faith, using the same methods, channels, and terms they normally use for similar jobs. Employers could not use PERM-specific webpages or application channels, requirements tailored to the foreign national, or in-person interview burdens. Recruitment that is less accessible or less favorable to U.S. workers would be presumed to be in bad faith, constitute an independent ground for denial of the PERM application, and be subject to referral to the Department of Justice (DOJ) and, where appropriate, the Equal Employment Opportunity Commission (EEOC).

Employers would also need to declare, under penalty of perjury, that they comply with a broader set of assurances, each of which would be a material condition of certification. The declaration would not substitute for required documentation. A false declaration or noncompliance could lead to revocation, debarment, referral to the DOJ and the EEOC, and criminal penalties.

The assurances would include that:

- The position is a bona fide, full-time, permanent job that remains open to any qualified U.S. worker until the Form I-140 petition is approved, or the PERM application or Form I-140 petition is denied or withdrawn;
- U.S. applicants are rejected only for lawful, job-related reasons;
- The employer complies with applicable anti-discrimination laws and offers U.S. workers terms no less favorable than those offered to the foreign national;
- The job is not vacant because of a strike or lockout; and
- The offered wage meets or exceeds applicable wage requirements, is not based on commissions or bonuses absent a guaranteed base wage, and can be paid from existing, non-contingent resources at the time of filing.

Implementation Timeline and Next Steps

The DOL will accept public comments for 60 days after the proposal is published in the Federal Register on November 17, 2026. The proposed changes would not take effect until the regulation clears the federal rulemaking process and is finalized, which typically takes several months.

After the comment period closes, the DOL must consider the feedback it receives. There is no deadline for this review, although the agency typically considers comments for a period equal to or similar to the comment period; a shorter review is possible. The final rule would then be published in the Federal Register with an effective date that is typically 30 to 60 days after publication. If the rule is finalized, legal challenges are possible.

If the rule is finalized, a 90-day transition period would follow publication of the final rule. The new requirements would apply only to PERM applications submitted on or after the end of that period.

Employer feedback could help inform the DOL of the proposal's impact on the business community.

KPMG INSIGHTS

The proposal would change both the length and sequencing of the PERM process. Longer recruitment periods, a narrower filing period, and the submission of recruitment evidence with the application could require employers to make sponsorship decisions and complete applicant reviews earlier.

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The proposed layoff provisions could be particularly significant for organizations undergoing reductions in force, reorganizations, or other workforce changes. Immigration teams may need timely access to information maintained by human resources, legal, employee relations, and workforce planning functions.

Employers and affected stakeholders might wish to consider:

- Identifying pending and planned cases that rely on Schedule A.
- Reviewing sponsorship timelines against the proposed recruitment and filing periods.
- Assessing whether immigration and talent acquisition teams' current systems retain complete applicant and recruitment records, including resumes and applications from U.S. workers.
- Comparing current recruitment practices for non-PERM positions, including application channels and interview procedures, against the proposed requirement that PERM recruitment mirror them.
- Reviewing how human resources teams record and communicate relevant layoffs internally.
- Evaluating processes for posting and maintaining Notices of Filing, including at third-party worksites, through resolution of the related Form I-140 petition.
- Examining how work locations and arrangements are described across recruitment and immigration documents for remote, client-site, staffing, or roving positions.
- Monitoring the rulemaking process for revisions, implementation dates, and transition provisions, and considering whether to submit comments to the DOL during the 60-day comment period.

If assignees and/or their program managers have any questions or concerns about the scope of the new regulations, its application and potential impacts, and appropriate next steps, they should consult with their qualified legal professional or a member of the GMS Immigration team with KPMG in Canada (see the Contacts section).

ENDNOTE:

1 U.S. Department of Labor, "Modernizing the Labor Market Test and Improving Protections for U.S. Workers in the PERM Immigrant Visa Program," released for public inspection on November 16, 2026.

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