

Notice of Filing Schedule A Occupation

Notice to Employees

Before an employer can file a petition, it must have also provided a notice of the position(s) it is seeking to fill under Schedule A, Group I or II, to the employer's bargaining representative.^[11] Alternatively, if there is no such representative, then the employer must provide notice to its employees.^[12] Such notice must be posted for at least 10 consecutive business days^[13] in a clearly visible location at the facility or location of employment.^[14]

Notice for Every Occupation or Job Classification

An employer must post a separate notice for every occupation or job classification that is the subject of a request for Schedule A designation. However, regulations do not require a separate notice for every petition seeking designation under Schedule A. For example, an employer would post separate notices for a home health nurse and an emergency room nurse because the nurses have different job duties and wage rates. An employer can satisfy the notice of posting requirements with respect to several persons in each job classification with a single notice of posting, if the title, wage, requirements, and job location are the same for each person.^[15]

Evidence of Compliance

An employer must be able to document that it complied with the notice of posting requirements.^[17]

If the employer notified its bargaining representative, then it may submit as evidence a copy of both the letter and the ETA Form 9089 sent to the bargaining representative(s). If the employer notified its employees, the documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of all the in-house media, whether electronic or print, that were used to distribute notice of the application in accordance with the procedures used for similar positions within the employer's organization.^[18]

Notice of Filing: Posting Requirements^[19]

Visible and Unobstructed

During the requisite posting period, a notice to the employees must be clearly visible and unobstructed while it is posted, and it must be posted in conspicuous places where the employer's U.S. workers can easily read the posted notice on their way to or from their place of employment. Appropriate locations include locations in the immediate vicinity of DOL-required wage and hour notices or occupational safety and health notices.^[20]

Description of Job and Rate of Pay

The notice must contain a description of the job and rate of pay and indicate that it is provided as a result of the filing of an application for permanent employment certification

for the relevant position.^[21] The rate of pay must meet or exceed the prevailing wage at the time of posting. If the notice contains a range of wages, the lowest wage rate must meet or exceed the prevailing wage at the time of posting.^[22]

DOL Certifying Officer Contact Information

In addition, a notice to the employees must also state that any person may provide documentary evidence bearing on the Schedule A labor certification application to the appropriate DOL Certifying Officer holding jurisdiction over the location where the beneficiary would be physically working.^[23] The notice must also provide the address of the appropriate Certifying Officer.^[24]

Period of Posting

Finally, the notice must be posted for at least 10 consecutive business days (including weekend days and holidays if these days are regular business days for the employer, that is, the employer is “open for business” on these days). In all cases, the burden is on the employer not only to establish that they posted the notice for 10 consecutive business days, but also that it was in an area that was accessible to its employees on each of these business days.

The notice must have been posted between 30 days and 180 days before the employer filed the petition.^[25] The last day of the posting must fall at least 30 days before filing in order to provide sufficient time for interested persons to submit, if they so choose, documentary evidence bearing on the application to DOL. Officers should deny the petition and any concurrently filed Form I-485 if the notice was not posted between 30 and 180 days before the petition’s filing.

“Business Day” for Purposes of Notice

The term “business day” typically means Monday through Friday, except for federal holidays. However, where an employer is open for business on Saturdays, Sundays, or holidays, the employer may include the Saturday, Sunday, or holiday in its count of the 10 consecutive business day period required for the posting of the notice of filing.^[26]

The employer, however, must demonstrate that it was open for business on those days and employees had access to the area where they could view the notice. Similarly, where an employer is not open for business on any day of the week, including Monday through Friday, the employer should not include any such days in its count of the 10 consecutive business days period required for the posting of the notice.

“Open for Business” for Purposes of Notice

If an employer must demonstrate that it was open for business on a Saturday, Sunday, or a holiday at the time of posting, the employer must provide documentation which establishes that on those days:

- Employees were working on the premises and engaged in normal business activity;
- The worksite was open and available to clients or customers, if applicable, as well as to employees; and
- Employees had access to the area where the notice of filing was posted.

4. Notice of Filing: Posting Locations^[27]

Posting at Worksite

If the employer knows where the beneficiary will be placed, then the employer must post the notice at the worksite(s) where the beneficiary will perform the work, and publish the notice internally using in-house media (whether electronic or print) according to the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question. The prevailing wage indicated in the notice is the wage applicable to the area of intended employment where the worksite is located.

If the employer currently employs relevant workers at multiple locations and does not know where the beneficiary will be placed, then the employer must post the notice at the worksite(s) of all of its locations or clients where relevant workers currently are placed, and publish the notice of filing internally using in-house media (whether electronic or print) according to the normal internal procedures used by the employer to notify its employees of employment opportunities in the occupation in question.

The situation of multiple work locations may arise in, but is not limited to, a scenario when the employer is a staffing agency which has clients under contract at the time that the employer seeks to post a timely notice of filing. In support of the petition, the employer may provide a copy of one posting notice supported by a list of all locations where the notice was posted and dates of posting in each location. The employer does not have to submit a copy of each notice.^[28]

Officers might encounter cases in which the employment is not full-time, permanent employment^[29] or where the worksite(s) is unknown and the employer has no current locations or clients. In those cases, the officer may deny the petition because no bona fide job opportunity exists.^[30]

In-house Media

An employer is required to publish the notice in all in-house media, whether electronic or print, that the employer normally uses to announce similar positions within its organization.^[31] The employer must submit as evidence a copy of all in-house media that was used to distribute notice of the application according to the procedures used for similar positions within the employer's organization.