

Practice Alert: DOL OFLC Provides Guidance on How to Indicate Telecommuting on ETA Forms 9141 and 9089

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[AILA's Department of Labor \(DOL\) Liaison Committee](#) posed the following fact pattern to DOL's Office of Foreign Labor Certification (OFLC) during the DOL Open Forum at the [2022 AILA Annual Conference](#). The committee received the following guidance after the conference.

Fact Pattern

If an Illinois employer (with no offices in Texas) indicates that telecommuting is permissible with a requirement that the employee must live in a specific state (such as Texas) but doesn't otherwise restrict the location, the work location would be unanticipated because the employee would be choosing where to live and could move at any time to a different area within the state. Under these circumstances, would OFLC please confirm that the employer should follow the Barbara Farmer memo and conduct the labor market test and indicate on the ETA Forms 9141 and 9089 that the work location is the company's headquarters address in Illinois?

DOL OFLC Response

In this situation, OFLC confirmed that the employer should indicate on the ETA Forms 9141 and 9089 that the employer address and the worksite is the Illinois location where there are offices. The employer should also use the Illinois location for recruitment purposes.

On the ETA Form 9141, OFLC prefers that the requirement to live in Texas be listed in the job duties section. On ETA Form 9089, this should be listed in the free text, special requirements section. Please note that this is Item H.14.

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