

Hurricane Harvey Guidance

Question: Will the Office of Foreign Labor Certification (OFLC) allow for extensions of response deadlines or other reasonable case-accommodations in light of the damage done by Hurricane Harvey?

Answer: Yes. We recognize that Hurricane Harvey generated significant damage to businesses in the Texas Gulf Coast Region and in Southwestern Louisiana, but is impacting other areas as well. OFLC has established internal procedures that recognize, as a result of the storm, 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 storm. Extensions will be granted for issues that arise from storm-related conditions, including delays caused as a result of the storm, as well as those delays that may have occurred as a result of storm preparations in the week before the storm.

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

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, OFLC will contact employers or their representatives using existing contact information to arrange for delivery of certifications to the best address before issuing certifications. OFLC also encourages employer representatives or employers to proactively provide updated contact information to the appropriate processing center using the email addresses 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 Hurricane Harvey. 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: **Hurricane Harvey** 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: **Hurricane Harvey** 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: **Hurricane Harvey** or telephone the Center at (404) 893-0101

Changes to point of contact information Due to Hurricane Harvey, OFLC will accept changes to employer, agent, or attorney point of contact information. Point of contact changes may be made to all pending applications, but changes to the work site location(s) may change key elements of an application – for example, a new work location can change the applicable prevailing wage rate and area of intended employment.

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

For those applications where either the employer or its attorney or agent is located in a Hurricane Harvey 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 because of the devastation caused by Hurricane Harvey), 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, employer appeals, and similar requests that have deadlines. In other words, for any of these application materials with a due date for a response, if the 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. 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 disaster areas eligible for Individual or Public Assistance as a result of Hurricane Harvey has been published and amended in the Federal Register, and is available at <https://www.fema.gov/disaster/4332>. 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. We will consider other deadline issues on a case-by-case basis.

Filing Date Extensions for PERM applications impacted by Hurricane Harvey. 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 Hurricane Harvey, employers or their attorneys within a FEMA-designated 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 to allow employers or their attorneys located within a FEMA-designated disaster area (as defined above) established on August 25, 2017, to file their permanent labor certification application by ninety (90) days after issuance of this guidance (December 1, 2017), so long as recruitment was begun within 180 days prior to Hurricane Harvey (February 26, 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 within the boundaries of 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 may be eligible to request relief 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 under the “contract impossibility” provisions found in the regulations at 20 CFR 655.122(o) (H-2A) and 20 CFR 655.20(g) (H-2B) and discussed in the Department’s FAQs available [here](#). Impacted employers may also be eligible to utilize emergency filing procedures, as outlined at 20 CFR 655.134 and 20 CFR 655.18, to file 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 location and proximity to hurricane affected areas when evaluating such requests.