

DOL Clarifies Several RIR Conversion Issues

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Q: Question 16 seems to indicate that we can challenge the prevailing wage before recruiting. If we send in a challenge, what will be the turn-around time to receive a response? If we already obtained a SWA wage, can we submit that in as an alternative source and will the BEC honor that SWA wage? (This could happen, e.g., because the SWA and BEC select different OES codes.)

A: We are making all efforts to review a wage challenge as quickly as possible. A SWA issued wage obtained by an employer independent of the application process will be considered as part of the evidence to rebut a BEC-issued wage, but it will be given no special evidentiary weight.

Q: Question 20 states: "changes to the original ETA-750 will not be accepted if they collectively constitute a new job opportunity." What is a "new job opportunity?" (e.g.: a change in the SOC code; a change in location?) If the DOL determines the change to be a new job opportunity, when will that evaluation be made? Will the DOL review the requested changes in the email and respond right away or will the employer have to submit the RIR conversion package and wait and see? If the DOL makes this determination, what will happen to the case? Does it stay a TR case and the changes will be acknowledged and a TR process can be done using the amended form? How and when will the employer be told the changes "constitute a new job opportunity?"

A: The legal standard for consideration of amendments has not changed. As always, the CO will look to the changes in the job description, duties, and minimum requirements to make such a determination. The evaluation will be made up front - at the time of the prevailing wage determination -- so that the employer will be able to act accordingly. If the case becomes a new job opportunity, the case will not be convertible to RIR and a TR process will be required.

Q: In one part of the DOL's 12/22/06 FAQ, it says the e-mail must be received before January 20. Elsewhere, it says not later than January 20. Note that January 20 is a Saturday. Can you please clarify whether e-mails actually sent on Saturday, January 20 are acceptable, and whether e-mails received until mid-night January 20th (or whatever is the last date) are acceptable?

A: We have posted a revised date for January 22, the following Monday. Emails must be received by midnight EST that night.

Q: The 12/22/06 DOL FAQ states that for conversion cases, when BEC has already placed the job order, the BEC will send all resumes to employer (around 2/1/07) for

consideration by employer. If DOL is going to require employers to review resumes received from the job order placed by BEC, in addition to resumes employers receive as a result of their own conversion recruitment, will DOL allow employers to use the job order placed by BEC as the additional forms of recruitment? This question was asked at the 12/11 meeting and the answer provided by Bill Rabung was basically, "no" you can't use the job order BEC places because the employer won't be getting the resumes in response to the job order. However, now that a process and timeframe (2/1/07) for providing the resumes to employers has been developed and employers must consider these resumes, then it seems reasonable that employers can use the job order as a form of recruitment to support conversion.

A: Unfortunately, the answer is still "no." The job order placed by the BEC is placed by the Department of Labor, and has at least one critical difference from the recruitment placed by the employer in an RIR opportunity: the employer's name does not appear in the job order. In addition, the job order placed by the BEC will be removed once an employer submits its email requesting conversion to RIR. It will not be a complete 30-day placement in the standard fashion of traditional recruitment; in some cases it may last for only a day. And the difficulties in tracking those cases in which amendments are accepted after a job order is placed (essentially mooted the job order) adds to the difficulty. As a result, that particular piece of recruitment cannot be considered as part of the employer's RIR; the employer did not place it and has not initiated it. We do not believe that this imposes a significant burden on employers who may as a result have to consider a small number of additional U.S. workers.