

*Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage
Determination Request Based on a Non-OES Survey*
Form ETA-9165 – General Instructions
U.S. Department of Labor



IMPORTANT: Please read these instructions carefully before completing the Form ETA-9165 *Employer-Provided Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OES Survey*, which is used for **non-Occupational Employment Statistics (non- OES) surveys**. These instructions explain the questions for the Form ETA-9165. Failure to fully and accurately complete this form may result in rejection of the survey request. If you need additional room to complete an answer, please begin the answer in the space provided on the form and provide an attachment to the relevant section and item, clearly identifying each response. ALL required items with an asterisk (*) must be completed as well as any fields/items where a response is conditioned on the response to another required field/item with a section symbol (§). Anyone, who knowingly and willingly furnishes any false information in the preparation of Form ETA-9165 and any supporting documentation, or aids, abets, or counsels another to do so is committing a federal offense, *punishable by fines, imprisonment or both (18 U.S.C. 2, 1001, 1546, 1621)*.

Section A: Employer Point of Contact Information

1. Enter the last (family) name of the employer's point of contact.
2. Enter the first (given) name of the employer's point of contact.
3. Enter the middle name(s) of the employer's point of contact.
4. Enter the area code and telephone number of the employer's point of contact. Include country code, if applicable.
5. Enter the extension of the telephone number of the employer's point of contact, if applicable.
6. Enter the fax number, if applicable.
7. Enter the business e-mail address of the employer's point of contact in the format name@emailaddress.top-level domain, if applicable.

Section B: Employer Information

1. Enter the full legal name of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application. The employer's full legal name is the exact name of the individual, corporation, LLC, partnership, or other organization that is reported to the Internal Revenue Service.
2. Enter the full trade name or "Doing Business As" (DBA) name, if applicable, of the business, person, association, firm, corporation, or organization, i.e., the employer filing this application.
3. Enter the area code and telephone number for the employer's principal place of business, if applicable. Include country code, if applicable.
4. Enter the extension of the telephone number for the employer's principal place of business, if applicable.
5. Enter the nine-digit Federal Employer Identification Number (FEIN) as assigned by the IRS. **Do not enter a social security number. Note:** All employers, including private households, MUST obtain an FEIN from the IRS before completing this application. Information on obtaining an FEIN can be found at www.irs.gov.
6. Enter the four to six-digit North American Industry Classification (NAICS) code that best describes the employer's business, not the foreign worker's job. A listing of NAICS codes can be found at <http://www.census.gov/epcd/www/naics.html>.

Section C: Employer-Provided Survey Information

1. Enter the complete name or title of survey. If the survey was commissioned by the employer and does not have a name, enter 'Employer Commissioned'.
2. Mark "Yes" or "No" as to whether a Collective Bargaining Agreement (CBA) is applicable to the job opportunity.
3. Mark "Yes" or "No" as to whether a professional sports league's rules or regulations are applicable to the job opportunity.
4. Mark "Yes" or "No" as to whether the survey data was collected by any H-2B employer or any H-2B employer's agent, representative, or attorney. **Important Note:** The survey collection must be administered by a bona fide third party. H-2B employers and/or agents, representatives, and/or attorneys for any H-2B employer are not bona fide third parties.
5. Enter the complete name of the third party surveyor, whether it is an individual or an organization. A state agency, state college, or state university is within the definition of a bona fide third party surveyor. Please do not enter

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- acronyms. Standard abbreviations are acceptable as long as they are clearly recognizable (e.g. Co., Inc.).
6. a. Enter the last (family) name of the official representative of the third party surveyor who approved the survey.
b. Enter the first (given) name of the official representative of the third party surveyor who approved the survey.
 7. Mark "Yes" or "No" as to whether the survey is based on wages paid 24 months or less before the date on which the survey will be submitted to ETA.
 8. Mark "Yes" or "No" as to whether this is the most recent edition of the survey. (Answer "Yes" if this is the only edition of the survey.)
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Section D: Relationship to job opportunity listed on the Form ETA-9141

1. Enter the title(s) of the job(s) included in the survey.
2. Describe the duties of the job(s) included in the survey (submit an attachment if more space is required). This should be a list of tasks performed by those in the position(s) being surveyed. Any specific requirements such as licenses must be listed here as well.
3. Enter the area of intended employment covered by the survey. A list of counties is acceptable, as are standard Office of Management and Budget (OMB) Metropolitan Statistical Areas (MSAs).
4. Mark "Yes" or "No" as to whether the survey was expanded to include workers beyond the area of intended employment.
**Area of intended employment* means the geographic area within normal commuting distance of the place (worksite address) of the job opportunity for which the certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., average commuting times, barriers to reaching the worksite, or quality of the regional transportation network). If the place of intended employment is within an MSA, including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of intended employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a location outside of an MSA may be within normal commuting distance of a location that is inside (e.g., near the border of) the MSA. See 20 CFR § 655.5.
- 4a. If "Yes" in question 4, enter the geographic area surveyed.
- 4b. If "Yes" in question 4, **check all that apply** if the survey was expanded beyond the area of intended employment. Note that the only permissible reasons to expand the survey beyond the area of intended employment are to meet the 3 employer or 30 worker standards

Section E: Survey Methodology

1. Enter the universe (number) of employers who employ workers in the occupation and geographic area surveyed.
Example: An employer requires a seasonal employee to perform work in Baltimore, Maryland. The seasonal employee will perform tasks that are similar to those performed by workers who are currently employed in the occupation by fifty (50) other employers in the Baltimore Metropolitan Statistical Area. The universe of employers is fifty (50).
2. List the sources used to determine the universe of employers employing workers in the occupation and geographic area surveyed.
3. Indicate whether the surveyor attempted to contact all employers employing workers in the occupations in the geographic area surveyed (all employers) or a sample of employers in the geographic area (sample). **Important Note:** The survey must include wage data from at least thirty (30) workers and three (3) employers in the area of intended employment. The employer may elect to survey all employers in the area of intended employment, or submit a sample which meets the (30) worker and three (3) employer threshold. In instances where there are not at least thirty (30) workers and three (3) employers in the area of intended employment, the geographic area surveyed may be expanded beyond the area of intended employment.
- 3a If "Sample" in question 3, mark "Yes" or "No" as to whether the sample was selected randomly.

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- 3b If "Yes" in question 3a, enter a brief summary of the procedures used to randomize the sample.
 - 4 Enter the number of employers from whom the surveyor attempted to solicit a survey response.
 - 5 Mark "Yes" or "No" (from each responding employer), if the survey included the wages of all workers in the occupation regardless of skill level or experience, education, and length of employment.
 - 6 Mark "Yes" or "No" as to whether the survey included data collected across industries that employ workers in the occupation. To be permissible, the survey must be collected on a cross-industry basis. The survey must not target a specific segment of the labor population by sampling employers within only a specific industry or by sampling only employers meeting limited criteria. If an occupation surveyed occurs only in a single industry, mark "yes." Occupations typically appear in more than one industry. **Example**, an employer requires seasonal landscaping workers and has commissioned a third party surveyor to conduct a compensation survey. In order to comply with the cross industry requirement, the surveyor solicited responses from various types of employers with similarly employed workers such as, but not limited to, landscape contractors, property management companies, schools, government agencies and golf courses.
 - 7 Mark "Yes" or "No" as to whether the survey reflects the mean wage for all workers it covers.
 - 7a If "Yes" in question 7, enter the mean wage (specify whether hourly, weekly, or monthly).
 - 7b If "Yes" in question 8, enter the median wage (specify whether hourly, weekly, or monthly).
 - 8 Mark "Yes" or "No" as to whether the survey reflects the median wage for all workers it covers.
 - 9 Enter the number of employers (minimum of 3) the hourly, weekly, or monthly wage reported from the survey data is based on; enter the number of workers (minimum of 30) within the occupation in the geographic area surveyed who received those wages.
 - 10 Mark "Yes" or "No" as to whether the hourly, weekly, or monthly wage rate reported by the survey includes all types of wages paid to workers, including base rate of pay, commissions, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, piece rate, portal-to-portal rate, production bonus, and tips.
 - 11 Mark "Yes" or "No" as to whether the survey included wages from similarly employed workers in the occupation in the area of intended employment, irrespective of the workers' immigration status. See 20 CFR 655.10(f)(2).

Section F: Employer Declaration

The employer must declare under penalty of perjury that they have read and reviewed this application and that to the best of their knowledge the information contained therein is true and accurate. I understand that to knowingly furnish materially false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both (18 U.S.C. 2, 1001, 1546, 1621).

1. Enter the last (family) name of the person with authority to sign on behalf of the employer.
2. Enter the first (given) name of the person with authority to sign on behalf of the employer.
3. Enter the middle name of the person with authority to sign on behalf of the employer.
4. Enter the job title of the person with authority to sign on behalf of the employer.
5. The person with authority to sign on behalf of the employer must sign the application. Read the entire application and verify all contained information prior to signing.
6. The person with authority to sign on behalf of the employer must date the application. Use a month/day/full year (MM/DD/YYYY) format.

Section G: OMB Paperwork Reduction Act – Please Read

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The respondent's reply to these reporting requirements is required to obtain the benefits of temporary employment certification (Immigration and Nationality Act, Section 101). Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate to the U.S. Department of Labor • Employment and Training Administration • Office of Foreign Labor Certification Box PPII 12-200 • 200 Constitution Ave., NW, • Washington, DC 20210. **Do NOT send the completed application to this address.**