§ 655.19 Job contractor filing requirements.

(a) Provided that a job contractor and any employer-client are joint employers, a job contractor may submit an Application for Temporary Employment Certification on behalf of itself and that employer-client.

(b) A job contractor must have separate contracts with each different employer-client. Each contract or agreement may support only one Application for Temporary Employment Certification for each employer-client job opportunity within a single area of intended employment.

(c) Either the job contractor or its employer-client may submit an ETA Form 9141, Application for Prevailing Wage Determination, describing the job opportunity to the NPWC. However, each of the joint employers is separately responsible for ensuring that the wage offer listed on the Application for Temporary Employment Certification, ETA Form 9142, and related recruitment at least equals the prevailing wage rate determined by the NPWC and that all other wage obligations are met.

(d)(1) A job contractor that is filing as a joint employer with its employer-client must submit to the NPC a completed Application for Temporary Employment Certification, ETA Form 9142, that clearly identifies the joint employers (the job contractor and its employer-client) and the employment relationship (including the actual worksite), in accordance with § 655.20(k);

(2) By signing the Application for Temporary Employment Certification, each employer independently attests to the conditions of employment required of an employer participating in the H–2B program and assumes full responsibility for the accuracy of the representations made in the application and for all of the responsibilities of an employer in the H–2B program.

(e)(1) Either the job contractor or its employer-client may place the required job order and conduct recruitment as
described in §655.16 and §§655.42–46. Also, either one of the joint employers may assume responsibility for interviewing applicants. However, both of the joint employers must sign the recruitment report that is submitted to the NPC with the Application for Temporary Employment Certification, ETA Form 9142.

(2) The job order and all recruitment conducted by joint employers must satisfy the content requirements identified in §655.18 and §655.41. Additionally, in order to fully apprise applicants of the job opportunity and avoid potential confusion inherent in a job opportunity involving two employers, joint employer recruitment must clearly identify both employers (the job contractor and its employer-client) by name and must clearly identify the worksite location(s) where workers will perform labor or services.

(3)(i) Provided that all of the employer-clients’ job opportunities are in the same occupation and area of intended employment and have the same requirements and terms and conditions of employment, including dates of employment, a job contractor may combine more than one of its joint employer employer-clients’ job opportunities in a single advertisement. Each advertisement must fully apprise potential workers of the job opportunity available with each employer-client and otherwise satisfy the advertising content requirements required for all H–2B-related advertisements, as identified in §655.41. Such a shared advertisement must clearly identify the job contractor by name, the joint employment relationship, and the number of workers sought for each job opportunity, identified by employer-client name and location (e.g. 5 openings with Employer-Client 1 (worksite location), 3 openings with Employer-Client 2 (worksite location)).

(ii) In addition, the advertisement must contain the following statement: “Applicants may apply for any or all of the jobs listed. When applying, please identify the job(s) (by company and work location) you are applying to for the entire period of employment specified.” If an applicant fails to identify one or more specific work location(s), that applicant is presumed to have applied to all work locations listed in the advertisement.

(f) If an application for joint employers is approved, the NPC will issue one certification and send it to the job contractor. In order to ensure notice to both employers, a courtesy copy of the certification cover letter will be sent to the employer-client.

(g) When submitting a certified Application for Temporary Employment Certification to USCIS, the job contractor should submit the complete ETA Form 9142 containing the original signatures of both the job contractor and employer-client.

§655.20 Assurances and Obligations of H–2B employers.

An employer employing H–2B workers and/or workers in corresponding employment under an Application for Temporary Employment Certification has agreed as part of the Application for Temporary Employment Certification that it will abide by the following conditions with respect to its H–2B workers and any workers in corresponding employment:

(a) Rate of pay. (1) The offered wage in the job order equals or exceeds the highest of the prevailing wage or Federal minimum wage, State minimum wage, or local minimum wage. The employer must pay at least the offered wage, free and clear, during the entire period of the Application for Temporary Employment Certification granted by OFLC.

(2) The offered wage is not based on commissions, bonuses, or other incentives, including paying on a piece-rate basis, unless the employer guarantees a wage earned every workweek that equals or exceeds the offered wage.

(3) If the employer requires one or more minimum productivity standards of workers as a condition of job retention, the standards must be specified in the job order and the employer must demonstrate that they are normal and usual for non-H–2B employers for the same occupation in the area of intended employment.

(4) An employer that pays on a piece-rate basis must demonstrate that the