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To: Immigration Training Attendees

From: Matthew J. Lind
System Legal Counsel

Date: November 3, 2015

Re: Immigration Dos and Don'ts for Department Chairs

As UW institutions begin the search and screen process, it is important to remember that usually a few searches at your institution will result in hires requiring university sponsorship for a permanent resident visa, commonly known as a green card. If departments use the following guidance, the department will likely be able to use the original search and screen process to support a green card for the successful candidate.

If the department's search and screen process does not meet the standards described below as promulgated and/or enforced by the Department of Labor (DOL) and the U.S. Citizenship and Immigration Service (USCIS,) the department may need to redo the search. Additionally, the guidelines below are designed to maximize the correct determination of a prevailing wage. If a prevailing wage is determined, correctly or incorrectly, to be too high for the department's budget, the department may have to offer the position to another candidate.

1) POSITION DESCRIPTIONS

a) COLLEGE AND UNIVERSITY TEACHER

i) Do:
(1) Take advantage of the special green card process for "college or university teachers."
(2) Consider all tenure-track faculty positions to be a college or university teacher, since such positions require teaching responsibilities.
(3) Think broadly about the definition of a "teacher." A librarian who gives library orientation tours to undergraduate students is considered to be a "teacher."

ii) Don't:
(1) Expect green cards to be readily available for non-instructional positions.

Universities: Madison, Milwaukee, Eau Claire, Green Bay, La Crosse, Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout, Superior, Whitewater, Colleges: Baraboo/Sauk County, Barron County, Fond du Lac, Fox Valley, Manitowoc, Marathon County, Marinette, Marshfield/Wood County, Richland, Rock County, Sheboygan, Washington County, Waukesha, Extension: Statewide

b) PERMANENT POSITION

i) Do:
  (1) Consider tenure-track faculty positions "permanent" for the purposes of obtaining a green card.
  (2) Consider international candidates for a tenure-track faculty search.
  (3) Check to see if your campus sponsors academic staff positions for green cards.

ii) Don't:
  (1) Expect a green card to be available for an academic staff member on a fixed-term terminal contract.
  (2) Expect a green card or a temporary visa to be available for a university staff member.
  (3) Assume your campus sponsors temporary visas or green cards for academic staff positions.

c) JOB DUTIES

i) Do:
  (1) Familiarize yourself with DOL's Standard Occupation Classification (SOC) codes for higher education.[1]
  (2) Look to see if the position might stretch over more than one SOC code.
  (3) Decide which SOC code is primary.
  (4) Use words associated with the primary SOC code to describe the position. Here are some good examples:
    (a) *Professor of Engineering: Teach courses in how to apply science to engineering issues.*
    (b) *Professor of Economics: Teach courses in how to apply core knowledge to economics.*
  (5) Consider what expectations are normal for such positions in higher education.
  (6) Describe traditional service responsibilities as "support, assistance, collaboration, instruction, mentoring, etc."
  (7) Provide appropriate compensation for positions which:
    (a) *require knowledge and expertise in two different disciplines or*
    (b) *require actual administrative or supervisory duties.*

ii) Don't:
  (1) Use words associated with the non-primary SOC codes in a position description. Here are some examples of duties to run by the campus human resources office:
    (a) *Professor of Engineering: Teach courses in Physics, Physical Chemistry, and Materials Science.*
    (b) *Professor of Economics: Teach courses in Social Sciences.*
  (2) Characterize traditional service responsibilities as "leadership, supervision, oversight, direction, coordination, etc."

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[1]   Available at: http://www.onetonline.org/find/industry?i=61&g=Go.

(3) Describe working with students in the same manner as overseeing an employee.

d) DEGREE

i) Do:

(1) List a terminal degree as a preferred qualification. Here are some good examples:

(a) *Candidates with a completed terminal degree in English or closely related field preferred.*

(b) *Candidates with a completed Ph.D. in Physics or related field given preference.*

(2) List a degree as a minimum requirement if an applicant would **<u>not</u>** be considered without having such a degree. Here are some good examples:

(a) *Master's degree or its functional equivalent in Math or closely related field.*

(b) *To be considered, a candidate must have completed all the requirements, other than a dissertation, for a terminal degree in Sociology.*

(3) Provide a deadline by which a preferred degree must be obtained. ***Plan to end the employment if that deadline is not met.*** Here are some good examples:

(a) *A terminal degree in Chemistry or closely related field must be obtained within one year of starting employment at UW-College Town.*

(b) *To be considered for promotion or tenure, a Ph.D. in Philosophy, Religious Studies, or a related field must have been obtained.*

(4) List a specific subdisciplinary area of study or research interest as a stand-alone preferred qualification. Here are some good examples:

(a) *Preference will be given to a candidate with an educational background in treating sports-related injury.*

(b) *Candidates with an interest in literature examining the intersection of gender, class, and race will be preferred.*

ii) Don't:

(1) List a degree as a minimum requirement if you would consider candidates without that degree.

(2) List more than one degree as a minimum requirement without contacting your campus human resources office.

(3) Allow a candidate to complete the minimum requirement after hire without contacting your campus human resources office.

(4) Connect a specific subdisciplinary area of study or research interest to a specific degree.

(5) List a specific subdisciplinary area of study or research interest as a minimum requirement unless you will not consider applicants without that subdiscipline.

e) EXPERIENCE & TRAINING

    i) Do:
- **(1)** List desirable non-higher education experience as a preferred qualification. Here is a good example:
  - **(a)** *Candidates with experience as a professional accountant will be given preference.*
  - **(b)** *Candidates with experience as a professional accountant and those with a terminal degree in accounting will be given preference.*
- **(2)** Lower the minimum degree requirement if you want to consider candidates with a background that is an alternative to the degree requirement.
- **(3)** List specific experience as a preferred qualification if it can be gained while earning a degree that is a minimum requirement or another preferred qualification. Here are some good examples:
  - **(a)** *Preference will be given to candidates who have taught Chemistry courses at the post-secondary level.*
  - **(b)** *Candidates who have successfully taught gender studies courses will be given preference.*
- **(4)** Calculate and list the experience requirements to the nearest month.
- **(5)** Treat one academic year of experience as nine (9) months.

    ii) Don't:
- **(1)** List alternative requirements without checking with your campus human resources office. Here are some examples of requirements to run by the campus human resources office:
  - **(a)** *Candidates must have either a terminal degree in accounting or must have three years' professional experience as an accountant.*
  - **(b)** *Candidates must either have a terminal degree in public administration or a professional degree, such as a JD or an MPA and three years of professional experience in the public sector.*
- **(2)** List any experience that can be gained while earning a degree as a minimum requirement if you've already listed the degree as a minimum requirement.
- **(3)** Use a minimum experience requirement for a tenure-track faculty position without checking with the campus human resources office.
- **(4)** List more than thirty-six (36) months ***total*** experience for any entry-level position without checking with the campus human resources office.

f) LICENSURE

    i) Do:
- **(1)** List licensure, a certificate, or membership in a professional organization as a preferred qualification if it is common for those in similar positions to have such a qualification. Here are some good examples:
  - **(a)** *Candidates who are licensed to practice social work in Wisconsin will be given preference.*
  - **(b)** *Candidates are preferred if they have obtained certification in business process management.*

    (2) List a professional license or certificate as a minimum requirement if the position involves clinical or practical instruction by the successful candidate. Here are some good examples:

        (a) *To be considered, candidates must be licensed to practice nursing in the State of Wisconsin.*

        (b) *Valid teacher certification for secondary education must be obtained before the start date of employment.*

    (3) Specify the jurisdiction in which the license or certificate should or must be valid.

ii) Don't:

    (1) Make licensure, a certificate, or membership in a professional organization a preferred qualification if it is not normal for similar positions within higher education.

    (2) Make a licensure or a certificate a minimum requirement unless it is actually required to do the job.

g) FOREIGN LANGUAGE

i) Don't:

    (1) List knowledge of a foreign language as a minimum requirement or preferred qualification without checking with the campus human resources office. For positions teaching a specified foreign language, such a requirement is already assumed under SOC Code 25-1124.00.[2]

h) SOFTWARE

i) Do:

    (1) List knowledge of a specific type of software as a preferred qualification if that type of software is normally used in similar positions in higher education.

ii) Don't:

    (1) List knowledge of a specific type of software as a minimum requirement for a tenure-track faculty position without checking with the campus human resources office.

i) OFFSITE WORK

i) Do:

    (1) Specify if the employee will be expected to perform work for the university outside of the *county* in which the campus is located.

ii) Don't:

    (1) Specify expectations of travel to professional conferences or on sabbatical that are normal for those in similar positions in higher education.

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[2] Foreign Language Teachers, Postsecondary, available at: http://www.onetonline.org/link/summary/25-1124.00.

j) ON-CAMPUS HOUSING

    i) Do:
        (1) Specify if the employee will be *required*, as opposed to *permitted*, to live on campus.

    ii) Don't:
        (1) Specify if the employee is merely permitted to live on campus.

2) PREVAILING WAGE

  a) DO:

    i) Check the prevailing wage for the position by following the following steps:
        (1) Go to http://www.onetonline.org/.
        (2) Click on "FLC Wage Search Wizard."
        (3) Choose "Wisconsin."
        (4) Then choose the most recent "ACWIA – Higher Education Database"
        (5) Then choose your *county* (not country.)
        (6) Then choose the appropriate SOC code for the position. Generally, SOC codes for higher education begin with a "25-."[3]
        (7) Then click "Search."

    ii) Remember that the campus can only determine its own prevailing wages for H-1B visas, but not for green cards.

    iii) Remember that the wages expire every June 30th.

  b) DON'T:

    i) Expect a DOL wage determination to be done quickly.

    ii) Rely on a wage if the labor certification will be filed after the upcoming June 30th.

    iii) Publish a wage in an ad without checking with the campus human resources office.

3) ADVERTISEMENTS

  a) DO:

    i) Always place an ad with a professional association or place where qualified candidates in your field are likely to look.
        (1) Placing more than one ad is totally acceptable.

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[3] The Standard Occupational Classification (SOC) codes for higher education are available at: http://www.onetonline.org/find/industry?i=61&g=Go

      (2) If you do not put ads where qualified candidates would look, this could pose other problems.

  ii) ALSO place an ad in the Chronicle of Higher Education (the "Chronicle").

      (1) The Chronicle offers universities the ability to purchase high volume web-ad packages with prices ranging from \$143 to \$248 per ad.[4]

      (2) The DOL and USCIS have historically considered the Chronicle to be a "national professional journal" for "college and university teachers."

  iii) Include the entire text of the position listing available at human resources.

      (1) There is no extra charge for extra text for web-only ads at the Chronicle.

      (2) You must include the "title, duties, and requirements" for the position.

      (3) "Pointer ads" that direct the applicant to the university's website are not sufficient.

  iv) Post web ads for a minimum of thirty (30) calendar days.

  v) Print out the ad from a web-browser on the day it goes up and the day it comes down.

      (1) Print the ad as a PDF and save it electronically, if you have PDF software such as Adobe Professional, Google Chrome, CutePDF, PrimoPDF, etc.

      (2) If your campus has TAM or another electronic search software, feel free to save it there.

b) DON'T:

  i) Expect DOL or USCIS to publish a list of acceptable "national professional journals."

      (1) DOL and USCIS want to be able to evaluate each case under its own unique set of circumstances.

      (2) Any ad published somewhere besides the Chronicle will be subject to a very close review by an individual who is likely not familiar with which ads are appropriate for a recruitment in your discipline.

  ii) Expect to find a cost-effective reason not to publish an ad in a Chronicle.

      (1) The work time university employees spend justifying that a journal in your discipline is a "national professional journal" will probably cost the university more than publishing a web ad in the Chronicle.

      (2) The cost to the Department and to the successful candidate if the labor certification is rejected because an ad is not published in the Chronicle will be far more than the cost of running an ad in the Chronicle.

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[4]   Based on the current pricing structure available at:
http://chronicle.com/items/biz/pdf/CHE_recruitment_rates.pdf

4) SEARCH PROCESS

    a) EVALUATING CANDIDATES

        i) Do:
          (1) Consider equivalent foreign degrees as meeting the minimum requirement or preferred qualification.

        ii) Don't:
          (1) Refuse to consider an equivalent foreign degree as meeting the minimum requirement or preferred qualification without checking with the campus human resources office.
          (2) Consider candidates that do not meet the minimum requirements.
          (3) Use someone's immigration status as a reason not to consider them.
          (4) Consider experience obtained at your campus when evaluating a candidate without checking with the campus human resources office.

    b) TRAVEL FUNDING

        i) Do:
          (1) Set a neutral rule about how candidate travel expenses will be reimbursed. You can limit reimbursements to travel within the U.S., by total dollar amount, or by total mileage.
          (2) Stick to your neutral rules.

        ii) Don't:
          (1) Make decisions on the fly about how to reimburse candidates for travel.

    c) INTERVIEWS

        i) Do:
          (1) Give all the candidates the same opportunities to reschedule or teleconference for interviews.

        ii) Don't:
          (1) Consider a candidate who cannot attend the interview in the manner you have offered equally to candidates, even if that is due to visa difficulty.
          (2) Make any promises about obtaining a visa for any candidates.

5) OFFER LETTER AND CONTRACT

    a) START DATE

        i) Do:
          (1) Consider when the successful candidate needs to be within the United States, if the candidate is overseas.
          (2) Consider when the successful candidate will need to show up on campus to begin preparing for the school year, including orientation sessions and other such meetings.

(3) Include the following language in the contract, if a visa needs to be sponsored to begin before the traditional teaching date:

(a) *"As of [the start date], [the successful candidate] will have access to physical and electronic campus resources, including an office, the library, and an email account."*

(b) *If a tenure-track professor, also include: "As of [the start date], [the successful candidate] will begin working towards the research and service requirements for obtaining tenure."*

ii) Don't:

(1) Forget to consider the timing of an orientation or a move when writing the contract.

b) OFFER LETTER TIMING

i) Do:

(1) Remember that the clock for the campus to file a labor certificate for a green card begins on the day the first written offer letter is sent to the successful candidate.

(2) Save a dated copy of the initial offer letter.

(3) Work with your campus immigration professionals to have a labor certification filed within eighteen (18) months of that letter.

ii) Don't:

(1) Assume that the visa or green card process will move swiftly or smoothly.

c) FUTURE DEGREE OR CERTIFICATION REQUIREMENTS

i) Do:

(1) Include specific timeframes for the successful candidate to meet all future requirements, such as a degree or a certification.

(2) Make sure that all minimum requirements in the ad are completed before the eighteen (18) month deadline has passed or plan to do another search.

(3) Follow up with the candidate on a monthly basis to track his or her progress on meeting any future requirements.

(4) Treat U.S. nationals who fail to meet such requirements the same as foreign nationals.

ii) Don't:

(1) Trust the candidate's or employee's assurances that the process is on track.

(2) Make any promises regarding future employment if the minimum requirements are not met.

6) VISA FOLLOW-UP FOR FOREIGN NATIONAL EMPLOYEES

    a) PASSPORT

        i) Do:
- **(1)** Remind a foreign national employee, including permanent residents, to make sure that their passport is always up-to-date and renewed as far ahead as possible.

        ii) Don't:
- **(1)** Expect a temporary visa to be issued beyond the expiration date of the passport.

    b) TEMPORARY VISA (H-1B).

        i) Do:
- **(1)** Remember that it costs $325 with an additional one-time fee per employee of $500 and takes approximately six (6) months to obtain a temporary H-1B visa with normal processing.
- **(2)** Remember that an expedited H-1B visa costs an additional $1225, and still requires approximately sixty (60) days processing time.
- **(3)** Inform your campus human resources office as soon as possible if there is any concern about sponsoring a visa.

        ii) Don't:
- **(1)** Expect a visa to be quickly obtained.
- **(2)** Expect a visa to be issued for a longer period than the contract.

    c) GREEN CARD

        i) Do:
- **(1)** Remember that our employees are generally entitled to an Employee Based, Priority Two (EB-2) green card, if the process is done correctly.
- **(2)** Remember that it generally takes a minimum of two (2) years for a green card to be issued. For nationals of very populous countries, i.e., India and the People's Republic of China, it can take a much longer time.
- **(3)** Encourage employees to file the Form I-485 to obtain their green card at their earliest convenience.
- **(4)** Encourage employees interested in an Employment Based, Priority One (EB-1) green cards to contact the campus human resources office to discuss the EB-1 process.

        ii) Don't:
- **(1)** Offer to pay for a second green card application, including an EB-1, if the first has not yet been denied.
- **(2)** Sign any documents related to an EB-1 application without checking with the campus human resources office.

d) RESPONSIBILITIES OF THE FOREIGN NATIONAL.

   i) Do:
- **(1)** Encourage foreign national employees to seek out their own legal counsel if they have questions about how immigration law applies to them or their family.
- **(2)** Encourage foreign national employees to seek legal recommendations from their friends who have also sought immigration assistance.
- **(3)** Remind foreign nationals that they can hire an attorney from outside of the State of Wisconsin to assist them with immigration matters, as immigration is part of federal, not state, law.

   ii) Don't:
- **(1)** Offer to pay for a private attorneys fees. The UW System cannot reimburse employees for the services of their own attorney.
- **(2)** Offer to help or pay for immigration services for a foreign national's family. The UW System cannot pay for the immigration-related costs of a foreign national employee's family.
- **(3)** Offer to help or pay for the filing of Form I-485. The UW System cannot pay for an I-485.
- **(4)** Offer to help or pay for an application for U.S. citizenship. The UW System cannot pay for a U.S. citizenship application.

e) FOREIGN TRAVEL

   i) Do:
- **(1)** Remind employees on an H-1B visa to bring the following documents with them when they travel outside the U.S.:
  - **(a)** *Current passport,*
  - **(b)** *Most recent I-94 card,*
  - **(c)** *Most recent contract,*
  - **(d)** *Most recent approval notice (if they adjusted to their current status in the U.S.), and*
  - **(e)** *A letter explaining that the foreign national will continue to be employed and the university is anticipating his or her return.*

   ii) Don't:
- **(1)** Expect the university to be able to assist foreign national employees who are out of the country with their return.