



**McCandlish Holton**  
A PROFESSIONAL CORPORATION

### **Special Rules for University Teaching Faculty**

Labor Certification Applications filed on behalf of college and university teachers were previously processed through a “Special Handling” procedure at the DOL. Under PERM, the procedure remains in place but is called “Optional Special Recruitment” for college or university teachers. This procedure is very beneficial, since standard for evaluating US candidates is more favorable to the university teaching faculty. Under normal PERM processing, the standard is: if any US worker meets even the minimum qualifications for the position, the employer cannot proceed with the application for the foreign worker, even if the foreign worker is better qualified. Under Optional Special Recruitment, the standard is: if the foreign faculty member is the best qualified, then the employer can proceed with the application even if other minimally qualified US workers applied.

In order to take advantage of this standard, cases for university teaching faculty filed on or after March 28, 2005 must include the following information:

- Form ETA 9089: This is the new attestation-based Labor Certification Application under PERM. Applications must be filed within 18 months after the date that the alien is selected for the position pursuant to a competitive recruitment process.
- Prevailing Wage: The employer must agree to pay 100% of the determined prevailing wage for the position once the alien becomes a permanent resident. Previously, employers were permitted to pay within 95% of the prevailing wage for the position. If an employer disagrees with a prevailing wage determination, it may file supplemental

information, submit a new prevailing wage request or appeal the SWA's determination.

***Recruitment Documentation:*** The employer must recruit in accordance with the normal procedures set forth in PERM **or** document that the alien was selected through a competitive recruitment process during which the alien was found to be more qualified than any of the U.S. workers who applied. The employer must prepare a signed, detailed statement explaining its recruitment efforts that lists the total number of applicants and the specific, job-related reasons why the alien was found to be more qualified than each of the other U.S. worker applicants. The employer must also prepare the following documentation:

- A final report of the body recommending that the alien teacher be hired following the competitive selection process;
- A copy of an advertisement placed in at least one national professional journal, including the job title, duties and requirements;
- Evidence of all other recruitment sources used by the school to fill the position; and
- A written statement attesting to the alien's educational or professional qualifications and achievements.