

## News Release

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### **US Labor Department issues proposed rulemaking revising wage calculations for H-2B program**

#### *Proposed rule seeks to better protect American workers*

**WASHINGTON** — The U.S. Department of Labor's Employment and Training Administration today announced the publication of a proposed rule that seeks to improve the H-2B temporary nonagricultural worker program and better protect American workers. The proposed rule, to be published in the *Federal Register* tomorrow, addresses the calculations used to set wage rates for H-2B workers.

The H-2B program allows the entry of foreign workers into the U.S. when qualified American workers are not available and when the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed American workers. The H-2B program is limited by law to a program cap of 66,000 visas per year.

"It is important that the H-2B program provide fair wages for both American and foreign workers," said Secretary of Labor Hilda L. Solis. "This proposed regulation better reflects the economic realities in the marketplace for these jobs and helps ensure that the program is utilized as it was intended."

The previous administration promulgated H-2B regulations and did not seek comment in the rulemaking process on the data used to set wage rates. Since the 2008 final rule took effect, however, the department has grown increasingly concerned that the current calculation method does not adequately reflect the appropriate wages necessary to ensure American workers are not adversely affected by the employment of H-2B workers. On Aug. 30, the U.S. District Court for the Eastern District of Pennsylvania ruled that the regulations issued by the department in 2008 had violated the Administrative Procedure Act. The court ordered the department to promulgate new rules that are in compliance with the APA concerning the calculation of the prevailing wage rate in the H-2B program no later than 120 days from the date of the order. Today's announcement begins the process of complying with the order and with achieving the department's goal of fully protecting the job opportunities and wages of American workers. The department anticipates a future rulemaking that will address other aspects of the H-2B program.

The proposed regulation would require employers to pay H-2B and American workers recruited in connection with an H-2B job application a wage that meets or exceeds the highest of: the prevailing wage, the federal minimum wage, the state minimum wage or the local minimum wage.

Under the proposed rule, the prevailing wage would be based on the highest of the following:

- Wages established under an agreed-upon collective bargaining agreement.
- A wage rate established under the Davis-Bacon Act or the Service Contract Act for that occupation in the area of intended employment.
- The arithmetic mean wage rate established by the Occupational Employment Statistics wage survey for that occupation in the area of intended employment.

The proposed rule eliminates the use of private wage surveys, as well as the current four-tier wage structure that differentiates wage rates by the theoretical level of experience, education and supervision required to perform the job, a system that is not relevant to the unskilled positions generally involved in the H-2B program.

Interested persons are invited to submit comments on this proposed rule via the federal e-rulemaking portal at <http://www.regulations.gov>.

- Read this news release [en Español](#).