



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2021 Adverse Effect Wage Rates for Non-Range Occupations

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce the 2021 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the Department has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment for a particular occupation and area so that the wages and working conditions of similarly employed workers in the United States will not be adversely affected. In this notice, the Department announces updates of the AEWRs, which are effective immediately pursuant to a recent federal court order. Supplemental Order Regarding Preliminary Injunctive Relief, *United Farm Workers, et al. v. U.S. Dep't of Labor, et al.*, No. 20-cv-1690 (E.D. Cal. Jan. 12, 2021), ECF No. 39.

DATES: These rates are applicable [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5311, Washington, DC 20210, telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer’s petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers in the United States unless the petitioner has received an H-2A labor certification from the Department. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rates for 2021

The Department’s H-2A regulations at 20 CFR 655.122(l) provide that employers must pay their H-2A workers and workers in corresponding employment at least the highest of: (i) the AEW; (ii) the prevailing hourly wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage rate; or (v) the federal or state minimum wage rate in effect at the time the work is performed. Further, when the AEW is adjusted during a work contract and is higher than the highest of the previous AEW, the prevailing rate, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the state minimum wage rate, the employer must pay that adjusted AEW upon the effective date of the new rate, as provided in the applicable *Federal Register* Notice. See 20 CFR 655.122(l) (requiring the applicable AEW or other wage rate to be paid based on the AEW or rate in effect “at the time work is performed”).

On November 5, 2020, the Department published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 85 FR 70445 (2020 AEW final rule), to establish a new methodology for setting hourly AEWs, effective December 21, 2020. On December 23, 2020, the U.S. District Court for the Eastern District of California issued an order enjoining the

Department from implementing the 2020 AEW final rule and ordering the Department to operate under the 2010 rule, *Temporary Agricultural Employment of H-2A Aliens in the United States*, 75 FR 6884 (Feb. 12, 2010). Order Granting Plaintiffs' Motion for a Preliminary Injunction, *United Farm Workers, et al. v. U.S. Dep't of Labor, et al.*, No. 20-cv-1690 (E.D. Cal.), ECF No. 37. On January 12, 2021, the district court issued a supplemental order requiring the Department to publish the AEWs for 2021 in the Federal Register on or before February 25, 2021, using the methodology set forth in the 2010 rule, and to make those AEWs effective upon their publication. Supplemental Order Regarding Preliminary Injunctive Relief, *United Farm Workers, et al. v. U.S. Dep't of Labor, et al.*, No. 20-cv-1690 (E.D. Cal.), ECF No. 39. Pursuant to the district court's supplemental order, the Department notified state workforce agencies (SWAs), employers, and the general public that the AEWs in effect on December 20, 2020, remained in effect during the interim period until the Department published this update of the AEWs for 2021 in the Federal Register. *See, e.g.,* Announcements, *OFLC Announces Updates to Implementation of the H-2A Adverse Effect Wage Rate Methodology for Non-Range Occupations Final Rule; Compliance with District Court Order* (Jan. 15, 2021), available at <https://www.dol.gov/agencies/eta/foreign-labor/news>. As reflected in the Department's announcement on the OFLC website at <https://www.dol.gov/agencies/eta/foreign-labor/news>, the district court's supplemental order also reserved decision on whether an award of backpay to affected H-2A workers may be warranted based on the difference, if any, between the applicable 2020 AEWs and the 2021 AEWs announced in this notice.

Accordingly, the 2021 AEWs for all agricultural employment (except for the herding or production of livestock on the range, which is covered by 20 CFR 655.200-235) for which temporary H-2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the state or region as published by the U.S. Department of Agriculture (USDA) in the 2020 Farm Labor Report on February 11, 2021.

The 2021 AEWRs to be paid for agricultural work performed by H-2A and U.S. workers on and after the effective date of this notice are set forth in the table below:

TABLE—2021 ADVERSE EFFECT WAGE RATES

State 2021 AEWRs

Alabama	\$11.81
Arizona	\$13.67
Arkansas	\$11.88
California	\$16.05
Colorado	\$14.82
Connecticut	\$14.99
Delaware	\$14.05
Florida	\$12.08
Georgia	\$11.81
Hawaii	\$15.56
Idaho	\$14.55
Illinois	\$15.31
Indiana	\$15.31
Iowa	\$15.37
Kansas	\$15.89
Kentucky	\$12.96
Louisiana	\$11.88
Maine	\$14.99
Maryland	\$14.05
Massachusetts	\$14.99
Michigan	\$14.72
Minnesota	\$14.72

Mississippi	\$11.88
Missouri	\$15.37
Montana	\$14.55
Nebraska	\$15.89
Nevada	\$14.82
New Hampshire	\$14.99
New Jersey	\$14.05
New Mexico	\$13.67
New York	\$14.99
North Carolina	\$13.15
North Dakota	\$15.89
Ohio	\$15.31
Oklahoma	\$13.03
Oregon	\$16.34
Pennsylvania	\$14.05
Rhode Island	\$14.99
South Carolina	\$11.81
South Dakota	\$15.89
Tennessee	\$12.96
Texas	\$13.03
Utah	\$14.82
Vermont	\$14.99
Virginia	\$13.15
Washington	\$16.34
West Virginia	\$12.96
Wisconsin	\$14.72

Wyoming

\$14.55

DATED: February 18, 2021

SIGNED:

Milton A. Stewart,

Acting Secretary of Labor.

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