SEPTEMBER 2, 2026. OFLC ANNOUNCES UPDATES TO IMPLEMENTATION OF THE H-2A ADVERSE EFFECT WAGE RATE METHODOLOGY FOR NON-RANGE OCCUPATIONS INTERIM FINAL RULE; COMPLIANCE WITH DISTRICT COURT ORDER

This notice is provided to comply with the August 26, 2026 Order of the United States District Court for the Eastern District of California entered in *United Farm Workers, et al. v. DOL, et al.*, No. 25-cv-01614-KES-EGC (“Order”), requiring the U.S. Department of Labor (the “Department”) to provide public notice that certain employers may be required to make back wage adjustment payments. The Department is complying with the Court’s Order by providing this notice. The Department’s compliance with the Order shall not be construed to waive its rights to seek further review of and relief from the Order. Nor shall the Department’s compliance be construed as an admission that a Court has the authority under law to compel DOL or employers to cause back wage adjustments for the reasons set forth in the Court’s Order.

Congress charged the Department with administering the H-2A program. In doing so, the Department is obligated to “balance the competing goals of the statute—providing an adequate labor supply and protecting the jobs of domestic workers.” *AFL-CIO v. Dole*, 923 F.2d 182, 187 (D.C. Cir. 1991). In carrying out that responsibility, courts have recognized that the Department has broad discretion to determine the appropriate methodology for establishing the Adverse Effect Wage Rate (“AEWR”). As one court explained, the “choice of [AEWR] methodology” for achieving those twin aims “is really a policy decision taken within the bounds of a rather broad congressional delegation” to the Department. *Kansas, et al. v. U.S. Department of Labor*, 749 F. Supp. 3d 1363, 1374 (S.D. Ga. 2024) (quoting *Dole*, 923 F.2d at 187).

The Department will continue to exercise that delegated authority by advocating for reasoned approaches to establishing the AEWR methodology that appropriately balances these statutory objectives and promotes continuity and predictability in the H-2A program. To be clear, no employer is under an obligation at this time to pay any back wages. The Department will also continue to preserve and advance its position against the future imposition of any back wage-adjustment obligations on the regulated community as a result of this decision.

The lawsuit at issue challenges the legality of the Department’s Interim Final Rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States*, 90 Fed. Reg. 47914 (Oct. 2, 2025) (“IFR”). The IFR established the methodology that the Department uses to calculate the AEWRs. The Court concluded that the methodology established in the IFR is unlawful but did not vacate the IFR and left in place the AEWRs previously issued under the IFR. The Court directed the Department to “promptly produce a new methodology for calculating” AEWRs and “to promptly publish new AEWRs under that methodology.”

Op. 27-28. The current AEWRs will remain in effect until the publication of new AEWRs. OFLC will notify the public when a new AEWR methodology is set and provide relevant transition procedures at that time.

The Order also requires the Department to "notify state workforce agencies, employers, and the public" that:

> ***Employers who hired or otherwise utilized H-2A labor that was governed by AEWRs published under the IFR between the date [of this notification] and the date on which a new AEWR methodology is issued pursuant to this Order (the "backpay period") may be required to make wage adjustment payments to qualifying H-2A workers and U.S. farmworkers in corresponding employment who worked during the backpay period, if those workers received an hourly wage below the new, applicable AEWRs generated under the new methodology.***

Op. at 28.

In other words, the Eastern District of California ordered the Department to provide notice that certain employers "may" be required to make back wage adjustment payments in the future. Again, **no such payment obligation exists at this time.** The period potentially subject to such an adjustment would run from the issuance of this notice, September 2, 2026, and end when the Department issues new AEWRs under a new methodology.

This announcement applies to (1) employers previously granted temporary labor certification where the certified end date of employment on the H-2A *Application for Temporary Employment Certification* remains valid as of the date of this announcement, including any approved extensions, (2) employers with pending H-2A *Applications for Temporary Employment Certification*, and (3) employers who file new H-2A *Applications for Temporary Employment Certification* after the date of this announcement until the OFLC Administrator publishes a new AEWR methodology.

The current AEWRs remain applicable at this time, and employers should continue to adhere to all applicable laws. Accordingly, and as part of their regulatory obligations to maintain accurate and adequate earnings records (*see* 20 C.F.R. § 655.122(j)), the Department reminds employers to record the names, and permanent home addresses, Social Security Number (SSN) if they have been issued one, and, where available, the Form I-94 Arrival/Departure Record Number, permanent email address and phone number of all H-2A workers and U.S. workers in corresponding employment who may later be entitled to backpay and make reasonable efforts to ensure that such information for each worker remains current.

Following the Court's ruling, the Department is considering appropriate next steps in the litigation and with respect to the Department's AEWR methodology. The Department's compliance with the Court's notice requirement does not alter its position concerning whether back wage-adjustment obligations may lawfully be imposed. The Department will continue to fight through the appropriate litigation process while fulfilling its statutory responsibilities through both administering the H-2A program and through rulemaking.

The Department will continue to work to provide as much certainty as practicable to American farmers, workers, and other H-2A program stakeholders and will provide further notice if the Court issues a ruling regarding potential backpay.

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