

Mobility: immigration alert

June 2021

United States

U.S. District Court vacates Department of Labor's high-skilled wage rule

Executive summary

On Tuesday, 22 June 2021, the U.S. District Court for the Northern District of California vacated the Department of Labor (DOL)'s high-skilled wage rule, based on agreement of both parties in the case of *Chamber of Commerce of the United States of America v. United States Department of Homeland Security*.

Background

On 8 October 2020, the DOL issued an Interim Final Rule (IFR) amending regulations governing the computation of Occupational Employment Statistics (OES) Survey-based wage levels for the H-1B, H-1B1, E-3 nonimmigrant visas, and certain immigrant visa categories. The changes resulted in higher prevailing wages for occupational classifications across the board and went into effect immediately.

On 1 December 2020 a federal court struck down the IFR, finding DOL had not satisfied the "good cause exception" and failed to provide advanced notice to the public.

On 14 January 2021, the DOL published a final rule in the Federal Register (final rule or high-skilled wage rule) that adopted changes to the Department's regulations governing the wage levels for permanent labor certifications (PERM) and Labor Condition Applications (LCAs). Under the amended rule, the OES prevailing wage levels, representing the range of skills from entry level (i.e. Level I) to experienced (i.e. Level IV), would have significantly increased the

minimum wages across the four-tiered wage structure for purposes of PERM, H-1B, H-1B1, E-3 non-immigrant work visas, to the 35th, 53rd, 72nd, and 90th percentiles of the OES Survey, respectively.

This final rule was scheduled to be formally implemented on 15 March 2021 with wage levels taking effect on 1 July 2021. As a result of a Regulatory Freeze Memo issued by the Biden administration, which directed agencies to consider delaying the effective date for regulations, the effective date of DOL's final rule was delayed to 14 May 2021.

On 22 March 2021, DOL proposed a further delay in the effective date of the final rule by eighteen months or until 14 November 2022, along with corresponding proposed delays to the rules transition dates, to 1 January 2023, under which adjustments to the new wage levels would begin.

What this means

With the High Skilled Wage Rule vacated, U.S. employers remain subject to the existing DOL wage requirements, which are set at approximately the 17th, 34th, 50th, and 67th percentiles of the OES Survey.

Since March, the DOL has been engaging in a comprehensive review and analysis of the final rule. In doing so, there remains the possibility that the DOL may look to introduce another rule addressing wage requirements in the future, based on feedback from stakeholders.



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EY Law will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our U.S. immigration professionals.

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EYG no. 005570-21Gb1

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