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Immigration

Departments of Labor and Homeland Security Announce New Prevailing Wage and H-1B Requirements

Legal Update

10.13.2020

On October 8, 2020, the Department of Labor began implementing a new prevailing wage system with higher wage thresholds for H-1B, E-3 and PERM applications. These changes would immediately increase wages for foreign workers across the board. This is not retroactive, however, so cases in the queue are not impacted.

An H-1B Interim Final Rule that is set to take effect in 60 days was also published by the Department of Homeland Security that would tighten H-1B visa eligibility.

The increases in prevailing wages will have an immediate impact on new or renewed H-1B applications and extensions, as well as on PERM labor certification applications. Top administration officials have stated that these changes will protect American jobs during the pandemic, but employers and immigration lawyers point out that they will have an adverse impact on employers across the country, including rural hospitals and other health care providers.

Litigation related to these rule changes is already in the works under a variety of legal justifications. For one, the rules were enacted without a required review and comment period, limiting employers' ability to explain why they are detrimental, not only to immigrant employees but to employers and American workers, whose wages would be artificially increased, possibly leading to lay-offs and other issues at a time of crisis when U.S. workers can least afford it. Stay tuned for further developments, including a possible reversal or temporary injunction of the changes by our federal courts.

We will work closely with all our clients on those impacted as to how to work through the new prevailing wage data.