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Immigration

DOL Final Rule Revises AEWB Methodology for H-2A Non-Range Occupations

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

The Department of Labor (DOL) issued a final rule effective March 30, 2023, revising the methodology by which it determines the hourly Adverse Effect Wage Rates (AEWRs) for non-range occupations (i.e., all occupations other than herding and production of livestock on the range). DOL said it believes the new methodology "strikes a reasonable balance between the statute's competing goals of providing employers with an adequate supply of legal agricultural labor and protecting the wages and working conditions" of similarly situated U.S. workers.

For the vast majority of H-2A job opportunities represented by the six Standard Occupational Classification (SOC) codes comprising the field and livestock worker (combined) wages reported by the U.S. Department of Agriculture, DOL will continue to rely on the Farm Labor Survey (FLS) to establish the AEWRs where a wage is reported by the FLS. For all other SOC codes, DOL will use the Occupational Employment and Wage Statistics (OEWS) survey to establish the AEWRs for each SOC code. Additionally, in circumstances in which the FLS does not report a wage for the field and livestock workers (combined) occupational group in a particular state or region, DOL will use the OEWS survey to determine the AEWR for that occupational group.