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Immigration

OFLC Implements District Court Order Requiring Backpay for Qualifying H-2A Workers

Legal Update

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By Immigration Group

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.

Under a court order in *United Farm Workers v. DOL*, the Department of Labor's Office of Foreign Labor Certification (OFLC) announced on July 6, 2021, that H-2A employers that submitted job orders (Form ETA-790/790A) to state workforce agencies or applications for H-2A temporary labor certification (Form ETA-9142A) to DOL between December 21, 2020, and February 23, 2021, must make wage adjustment payments to qualifying workers and certify compliance by September 4, 2021.

The payments must be made to qualifying H-2A workers and U.S. farmworkers in corresponding employment who worked during the period from January 15, 2021, to February 23, 2021, and received an hourly wage below the geographically applicable 2021 Adverse Effect Wage Rate (AEWR). Each wage adjustment payment must equal the total number of hours a farmworker worked from January 15, 2021, to February 23, 2021, multiplied by the difference between the wage received and the geographically applicable 2021 AEWR.