



Immigration Practice Group

Prevailing Wage Increase for Highly Skilled Non-Immigrant and Immigrant Workers is Delayed until November 2022

Syracuse ♦ Ithaca ♦ New York City

May 2021

The Department of Labor ("DOL") delayed until November 2022 the effective date of the Trump Administration's rule titled "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States" (the "**Prevailing Wage Rule**" or "**Rule**") which significantly raised the minimum wage employers must pay to highly skilled H-1B, H-1B1, and E-3 nonimmigrant workers, and immigrant workers under PERM cases. The DOL stated that the delay is necessary to provide agency officials with sufficient time to compute and validate prevailing wage data covering specific occupations and geographic areas and to ensure effective implementation of the revised prevailing wage levels. The DOL has also released a new implementation schedule to give employers time to prepare for the increased prevailing wage requirements.

Background

In October 2020, the Trump administration issued the Prevailing Wage Rule that would have substantially increased the prevailing wage requirements for H-1B, H-1B1, E-3, and PERM cases, starting as of July 1, 2021. The wage increase was so significant that many employers raised concerns that they would not be able to afford to employ even entry-level foreign workers once the Rule takes effect. After the Biden administration entered the office, it imposed a regulatory freeze on the Prevailing Wage Rule, first delaying it for 60 days and now for 18 months, to November 14, 2022. Putting off the effective date of the Rule will allow the Biden administration to review and make changes to it.

New Implementation Schedule

The Prevailing Wage Rule provides for two sets of transition timelines: the first is a two-step process to be used for most H-1B, H-1B1, and E-3 temporary visa workers, and the second is a four-step process to be used for foreign workers who are in the process of obtaining permanent residency, i.e., those who are beneficiaries of approved I-140 immigrant visa petitions or are eligible to extend their H-1B status beyond the default 6-year limit due to pending green card cases.

Two-Step Timeline

- Until December 31, 2022 – current prevailing wages remain in effect
- January 1, 2023 – December 31, 2023 - prevailing wages will be 90% of new prevailing wages
- Starting January 1, 2024 – prevailing wages will be set at the full new prevailing wage levels

Four-Step Timeline

- Until December 31, 2022 – current prevailing wages remain in effect
- January 1, 2023 – December 31, 2023 - prevailing wages will be 85% of new prevailing wages
- January 1, 2024 – December 31, 2024 - prevailing wages will be 90% of new prevailing wages
- January 1, 2025 – December 31, 2025 - prevailing wages will be 95% of new prevailing wages
- Starting January 1, 2026 – prevailing wages will be set at the full new prevailing wage levels

Continued on Next Page



Prevailing Wage Increase for Highly Skilled Non-Immigrant and Immigrant Workers is Delayed until November 2022

The delay of the effective date of the Rule is good news for employers as it will provide more time for them to apply for and receive the DOL's certification of the prevailing wage determinations and labor condition applications for their foreign workers, based on the current prevailing wage levels, until the Rule takes effect in November 2022. Although there is a high likelihood that the Rule will eventually go into effect, it may be significantly revised by the Biden administration to provide for a new wage computation methodology resulting in a more gradual market-based prevailing wage increase.

If you have questions about these and other business immigration matters, please contact Anna Putintseva, Esq. at 315-701-6372 or aputintseva@bhlawpllc.com.



For questions and/or additional information, please contact:

Anna Putintseva · aputintseva@bhlawpllc.com · 315.701.6372

Bousquet Holstein PLLC ▪ 110 West Fayette Street, Syracuse, NY 13202 ▪ www.BHLAWPLLC.com
Attorney Advertising