NATIONAL AFFAIRS

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Department of Labor Issues New Adverse Effect Wage Rate Methodology and Requests Comment

On October 2, the U.S. Department of Labor (DOL) issued an interim final rule regarding H-2A wage rates. The new Adverse Effect Wage Rate (AEWR) calculation methodology will be based on DOL's Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS). This follows the U.S. Department of Agriculture's (USDA) decision to discontinue the Farm Labor Survey and a Federal District Court's decision to undo the previous Administration's disaggregation rule. The rule became effective October 2 and applies to any new H-2A contracts.

Under the new rule, a worker's wage is based on the skill level, which is determined by the job description and the experience required for that particular job. There will be two wage categories based upon skill level: Skill Level I – entery level, and Skill Level II – experienced level. These apply to both field and livestock workers. Skill Level II workers are those whose jobs require prior experience, a special license, or a certificate. Each state's state workforce agency and the DOL's Office of Foreign Labor Certification will determine the appropriate skill levels for each job application.

Additionally, the new rule allows for a housing adjustment based upon the Department of Housing and Urban Development's (HUD) fair market rents for a four-bedroom house. Note that the adjustment can be no more than 30% of the AEWR. As the new wage rates will be directly tied to the job description in each contract, it is imperative that employers take extreme care when drafting job descriptions. In Kentucky, including the housing adjustment, the Skill Level I wage is $12.70 (20% decrease) and the Skill Level II wage is $16.75 (6% increase).
The new AEWRs and housing adjustments will be posted each year around July 1, rather than in January as previously done.

The DOL is requesting comments on the new rule and the deadline for those comments is December 1. Kentucky Farm Bureau Federation will be submitting comments and encourages all members to submit comments, as well. For those wishing to comment, below is a template that members can use.

AFBF Policy:

- "We support an H-2A wage freeze at 2023 levels."
- "We support [the] elimination of the Adverse Effect Wage Rate. Until then, we support seeking legislative proposals that would cap year-over-year increases and account for regional variability with competitive labor rates. Additionally, changes in the H-2A program wage rate methodology should reflect a correlation to the state minimum wage."
- "We support the abolishment of the Adverse Effect Wage Rate methodology regarding disaggregation for the temporary employment of H-2A nonimmigrants in non-range occupations in the United States finalized in March 2023."

AFBF issued a Market Intel summarizing the new rule and can be accessed here.

To read the full rule on the Federal Register, click here.

Sample comment:
"My name is __________ and I am a farmer in ________ County, Kentucky. I write in support of the Department of Labor's new H-2A wage calculation methodology and ask that the Administration work with Congress to make the change permanent in law. American agriculture largely depends upon H-2A workers, and the demand is only growing. With the increase in demand for H-2A workers has also come an increase in labor costs. The Adverse Effect Wage Rate (AEWR) has drastically increased in recent years to the point it is no longer tenable for farmer employers. The new AEWR calculation methodology is a significant step in the right direction for decreasing costs for farmer employers. While this change is greatly appreciated, I encourage the Administration to work with Congress to make the change permanent in law so it is not immediately undone by another administration in the future."