



# In a Win For Agriculture Employers, H-2A Wage Rules Change Again – Answers to Your Top 5 Questions

Insights

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Since 2023, H-2A employers have navigated a complex framework for determining the proper wage for their workers. But it's time to throw all that out the window – agriculture employers can celebrate because we're back to the old rules. Last week, a federal court tossed the complex 2023 final rule, and the Department of Labor announced days later that it would set future H-2A rates in accordance with the simplified 2010 rule. Here are the answers to your top five questions about this positive development.

## 1. What Was the 2023 Wage Rule?

The 2023 wage rule required H-2A employers who employed workers in specialized occupations outside the “big six” Standard Occupational Classifications (SOC) to look to wage rates published by the Bureau of Labor Statistics Occupational Employment and Wage Statistics Survey Program (BLS OEWS) and pay the higher of the OEWS wage or the current Adverse Effect Wage Rate (AEWR).

In most cases, the specialized job code OEWS rate was higher than the AEWR rate. [You can read a full recap about this rule here.](#)

## 2. What Happened Last Week?

On August 25, the U.S. District Court for the Western District of Louisiana issued an order in the case of *Teche Vermilion Sugar Cane Growers Association, Inc., et al. v. Lori Chavez-DeRemer* vacating the 2023 final rule. In response, on August 28, the DOL announced it would set future H-2A rates in accordance with the 2010 rule.

Industry groups like the National Counsel of Agricultural Employers, Florida Fruit and Vegetable, Florida Citrus Mutual, and the Florida Growers Association were quick to applaud the ruling and note it will bring wage relief to some H-2A employers subjected to the higher OEWS wage rates.

## 3. So...What Do H-2A Employers Pay Now?

Since we're now back to 2010 for future H-2A applications, you can adjust your practices to reflect the new standard.

- For existing labor certifications, H-2A employers must still pay the highest of the certified AEWR, the applicable prevailing rate, agreed upon collective bargaining rate, or Federal or State minimum wage.
- Going forward, however, it means no more looking up job codes and determining whether your job description fits within the “big six” or not.

Many employers changed filing methods in response to the 2023 rule, including splitting contracts based on occupational “coding” and wage differences. You should consult with your counsel and agents in determining how to move forward in light of this change.

#### **4. Is There More to Come?**

Fisher Phillips served as lead counsel in one of the cases that brought about this legal challenge and ultimate change. Employers consistently cite the expense of the H-2A program as the biggest challenge to participation, and increasing immigration enforcement activities involving farmworkers makes it more important than ever that the government address this challenge. We expect the following to occur given these developments:

- We first expect additional guidance from DOL in the coming days based on their August 28 announcement that will help steer employers in the right direction.
- We further anticipate the DOL to issue a proposed rule to further address the issues with the AEWR methodology by early 2026.

#### **5. What’s Left to Cover?**

Last week’s court ruling and the subsequent DOL announcement did not address industry concerns about the methodology for calculating the AEWR, nor address the rapid increase in AEWR rates over the years. The 2025 AEWR for California, for example is \$19.97 per hour, which workers earn separate and apart from the free, employer-provided housing and other benefits. We’ll monitor the situation and provide updates as events warrant.

#### **Conclusion**

Please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Agriculture Industry Team](#) with questions or to develop a plan to address your farm labor needs. To ensure you stay current on the administration’s actions that affect ag labor, sign up to receive updates from the [Fisher Phillips Insight System](#).

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