

IMPORTANT NOTICE REGARDING DOL IMPLEMENTATION OF DISTRICT COURT ORDER; H-2A ADVERSE EFFECT WAGE RATES

Dear Employer:

On December 23, 2020, the U.S. District Court for the Eastern District of California issued an order in *United Farm Workers, et al. v. DOL, et al.*, No. 20-cv-01690, enjoining the Department of Labor (Department) from implementing its Final Rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 85 FR 70445 (Nov. 5, 2020), and ordering the Department to operate under the 2010 rule, *Temporary Agricultural Employment of H-2A Aliens in the United States*, 75 FR 6884 (Feb. 12, 2010).

On January 12, 2021, the court issued a supplemental order requiring the Department to publish the adverse effect wage rates (AEWR) for 2021 in the Federal Register on or before February 25, 2021, using the methodology set forth in the 2010 rule, and to make those AEWRs effective upon their publication. Additionally, the court ordered the Department to notify all state workforce agencies, employers, and the general public that the AEWRs in effect on December 20, 2020, will remain in effect during the interim period until the Department publishes 2021 AEWRs in the Federal Register.

Please note that, while the court reserved decision on whether an award of backpay is warranted based on the difference, if any, between the 2020 AEWRs and the final 2021 AEWRs, the court ordered the Department to provide notice to all employers who submit job orders and applications under the H-2A program between December 21, 2020, and the publication of 2021 AEWRs in the Federal Register, that affected H-2A workers may have a potential claim for backpay. Accordingly, and as part of your regulatory obligation to maintain accurate and adequate earnings records (see [20 CFR 655.122\(j\)](#)), the Department reminds you to record the names and permanent home addresses of all H-2A workers, and make reasonable efforts to ensure that such information for each worker remains current. The Department will provide further notice if and when the court issues a ruling regarding potential backpay.

The Department's notice regarding the court's orders may be found at <https://www.dol.gov/agencies/eta/foreign-labor>.