

# New H-2A wage rule: Context and next steps for farms

## What's happening

The U.S. Department of Labor (DOL) has issued an interim final rule (IFR) that changes how the Adverse Effect Wage Rate (AEWR) is calculated for most non-range H-2A jobs.

## Why DOL is changing the AEWR rule now

The DOL issued the rule as an "interim final rule" and cited these combined factors as "good cause":

- The prior AEWR was "unstable" and overly complex.
- The USDA discontinued the Farm Labor Survey, the prior AEWR data source.
- The 2023 AEWR rule was later vacated by a federal court, creating a regulatory gap.
- A large share of the ag workforce is undocumented.
- The domestic labor supply is insufficient to meet demand.
- The new approach is intended to make H-2A more predictable and better align wages with labor markets.

## Why the AEWR rule change matters

Employers must pay H-2A workers the highest of:

- (1) AEWR, (2) Applicable minimum wage (state/federal),
- (3) Prevailing wage, or (4) A collectively bargained rate.

The AEWR has historically been the highest in most states, so it typically sets the minimum pay for H-2A workers and for domestic workers doing the same job ("corresponding employment").

**The new method lowers the AEWR in many states, potentially shifting labor costs and hiring decisions for farms.**

## What's actually changing in AEWR calculations

**New data source.** The AEWR will now be based on BLS Occupational Employment and Wage Statistics (OEWS), which reflects wages in broader labor markets.

**Two skill levels.** There are now two skill levels and wage rates:

Entry-level (Skill Level I) - get lower AEWR

Experienced/Skilled (Skill Level II) - get higher AEWR

*Job requirements-not individual experience-determine level.*

**Housing value adjustment.** A downward wage adjustment may now be applied when calculating AEWR for workers who receive required "free" housing. It is:

- Based on the statewide 50th-percentile fair market rent for a 4-bedroom unit
- Adjusted for assumed occupancy and hours worked
- Capped at 30% of the AEWR

### What is the AEWR?

It is the wage level intended to ensure that hiring H-2A workers does not "adversely affect" the wages of U.S. workers performing similar farm jobs.

### What is an interim final rule?

It is a rule that takes effect immediately, even before the public comment period ends. Agencies can do this only if they show "good cause," meaning that delaying the rule would cause harm or be contrary to public interest.

### DOL projections for new rule:

- Approx \$2.46 bil. /yr in employer wage savings (\$24 bil. over 10 years)
- Estimated 119,000 more H-2A workers hired.

### What if my state's min. wage is higher than the new AEWR?

You must pay the highest applicable wage. State minimum wages or prevailing wages may override the new AEWR in some states.

### Do housing requirements change?

No. Farm employers must still provide "free" housing to H-2A workers (and domestic workers who cannot return home daily). The change is that the AEWR can now be adjusted downward to account for the value of housing provided.

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## Potential impacts of the AEWR rule change

- **Many jobs will likely be classified as entry-level.**
  - ◆ Many job orders are expected to qualify for the new, lower entry-level AEWR, driving down wages for H-2A workers.
- **The housing adjustment will further drive down the AEWR**
  - ◆ Providing “free” housing is required, but now it will effectively lower the wage rate for *all* H-2A workers where AEWR applies.
- **Domestic wages may also decrease where the AEWR drops.**
  - ◆ Domestic workers doing the same job (“corresponding employment”) must be paid at least the same rate as H-2A workers. Both groups may experience lower wage floors.
  - ◆ **This would undermine the goal that the AEWR is set out to achieve (setting a rate that does not adversely affect domestic wages).**

**How big are the expected wage changes?**  
 In many states, AEWR is expected to drop **\$2-4/hour**, plus an **additional \$1-3/hour** downward adjustment for housing provided to H-2A workers.

## Timeline

- Applies to **new job orders** filed on or after the effective date (October 2, 2025).
- Does **not** retroactively change previously approved job orders.
- The “interim final rule” is in effect as DOL reviews public comments and develops a **final rule**.
- **Comments are due: December 1.**

## Can this rule be legally challenged?

Yes, but the outcome is uncertain. Potential challenges could focus on:

- **Whether the new AEWR causes domestic wages to decrease or stagnate.** A challenge could argue that lowering the AEWR will effectively push down U.S. workers’ wages, which the underlying law for the AEWR is supposed to prevent.
- **Whether housing can legally be treated as non-monetary compensation in AEWR calculations.** A challenge could question whether the DOL is permitted to lower required wages by deducting required free housing from workers’ wage rates.
- **Whether issuing the rule without prior notice-and-comment was justified.** A challenge could argue that the agency lacked “good cause” to skip the usual public review process before making the rule effective.

## How can I submit comments?

Anyone may comment through the federal rulemaking portal by **December 1**. Visit [Regulations.gov](https://www.regulations.gov), and search for the rule’s docket number: **ETA-2025-0008**. Use the “Comment” button to submit your statement.