

Important Federal Immigration Policy Updates

On October 8, the U.S. Department of Labor (DOL) and the U.S. Department of Homeland Security (U.S. Immigration and Citizenship Services - USCIS) announced new rules which will impact H-1B Specialty Occupation, E-3 Australian Specialty Occupation, H1B1 Chilean/Singaporean Specialty Occupation nonimmigrant visas, and Permanent Residency (Green Card) applicants - all of which we support at Berkeley Lab through the assistance of the HR Shared Services International Researchers and Scholars Office (IRSO).

DOL Wage Rule Summary: Effective immediately, the DOL has released an [Interim Final Regulation](#) that increases prevailing wage levels for temporary foreign workers (H-1B, H-1B1, E-3) and green card applicants. **The new prevailing wages are approximately 25 percent higher for all levels of H-1B workers and green card applicants.** The higher wage obligations apply to any prevailing wage requests pending on October 8th, and forward.

Key Points:

- The wage increases affect all levels of workers and will not be limited to entry-level roles.
- **The wage increases go into effect immediately on October 8, 2020. There is no opportunity to comment before the new wage obligations become effective.**
- **The higher wage obligations will generally take effect the next time an H-1B worker extends or amends their status or when an employee obtains a green card.**
- **Employees represented by a Union (Postdocs, for example) will not be impacted by the wage determination changes.**
- The regulation will likely be challenged in court. Though it is always difficult to predict the outcome of litigation, there are strong arguments that the process and rationale are legally deficient.

USCIS Rule Summary: U.S. Citizenship and Immigration Services (USCIS) has released an [Interim Final Regulation](#) that will restrict access to the H-1B visa category. **When effective, the changes will apply to new hires and current H-1B workers who apply to extend or amend their status, much like mentioned above in the DOL summary.** All employers will be subject to a new definition and standards for an H-1B “specialty occupation.” These changes will make it more difficult to obtain H-1B status if the occupation does not always require a degree in directly related specific specialty. **The new regulation will become official on December 7, 2020.** USCIS will accept comments prior to that date, but no changes are expected. Litigation is highly likely.

Key Points:

- The impending regulation change will make it more difficult to establish eligibility for H-1B status.
- **The regulation changes the definition of an H-1B “specialty occupation.”**
The new definition requires an applicant to have a college degree in the specific field in which he or she will be employed. For example, a software developer with a degree in electrical engineering would no longer qualify. The new definition also requires a company to establish that the specific degree is always required, making it more likely that the agency will conclude that entry-level positions do not rise to the level of an H-1B caliber visa.
- **The changes will apply to all H-1B petitions filed after the effective date. This means the heightened standards will apply to existing workers who seek to extend or amend their H-1B status.**
- **All companies will see some increase in H-1B denials, though the extent of impact will vary.**
- The regulation will go into effect 60 days after publication (December 7, 2020), and the agency will accept comments prior to that date.
- The regulation will most likely be challenged in court, but it is too early to predict the likelihood of an injunction being issued prior to the effective date.

What does this mean to the Lab and its current and future foreign national population of employees?:

- Any Labor Condition Applications (LCAs) for H-1B, H1B1, and E-3 visas filed after today will either need to meet the new prevailing wage data listed on the DOL website or adhere to an alternate survey source utilized by the employer.
- Any PERM (Green Card case requiring Labor Certification) prevailing wage that has not yet been issued will use the new data, unless there is litigation.
- Previously approved PERM Labor Certifications and I-140s will not be impacted.
- Already certified prevailing wages are not impacted.
- Job roles that allow for alternative degree requirements will face heightened Scrutiny and increased chance of denial.
- The new “specialty occupation” definition will apply to all companies, and it will apply to current and future employees.

You are welcome to join our external immigration council, Berry, Appleman & Leiden, LLP (BAL) Government Strategies Group for a timely analysis of these rapidly changing developments. The event will cover the latest developments on the two rules.

Date: Wednesday, October 14, 2020

Time: 2:00 pm ET/11:00 am PT

[Webinar Link](#)

All employees and managers are invited to join a webinar on Wednesday, Oct. 14

If you have any immediate or urgent questions regarding this information, please feel free to contact IRSO at irso@lbi.gov. We will continue to update you as we learn more about this topic.