

National Prevailing Wage Center Accepting Wage Source Change Requests for H-2Bs

Article By:

Immigration Team at Jackson Lewis

The **National Prevailing Wage Center (NPWC)** has acknowledged that the October 2013 government shutdown and the significant increase in wage survey-based prevailing wage requests from **H-2B** employers has delayed processing of **Prevailing Wage Determination** requests. These undue delays by the Department of Labor (DOL) and NPWC in adjudicating cases are prohibiting employers from filing their temporary labor certification applications in a timely manner.

The increase in wage survey-based prevailing wage requests is a direct result of the joint interim regulations that mandate a mean Occupational Employment Statistics (OES) wage be used for all H-2B cases, regardless of the complexity of the position at issue. In most cases, the mean wage is the equivalent of a Level 3 OES wage, which is usually prohibitively high for employers. It would price them out of their respective markets and impact their ability to get contracts and retain existing customers. As a result, many employers are choosing to use privately obtained wage surveys that reflect wages in a particular market or industry much more accurately; hence the increase in private wage survey-based prevailing wage determination submissions to the DOL/NPWC for H-2B cases.

While it can be argued that the DOL/NPWC should have foreseen this increase in wage survey submissions, it appears that the DOL and NPWC did not. In an attempt to alleviate their burden, they are now allowing employers to change their pending wage survey-based requests to regular prevailing wage requests, which would result in a faster determination and an OES median wage assignment. However, the possibility of receiving a quick wage determination will not be incentive enough for many employers to agree to a prohibitively higher wage for seasonal workers. Accordingly, we do not anticipate this will speed up the processing of prevailing wage determinations in a meaningful way.

Employers that want to continue utilizing the H-2B program will need to begin the process as early as possible to account for the delays in wage determinations. Our attorneys are monitoring this issue and working with clients to accommodate delays and obtain timely H-2B certifications for their seasonal needs.

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