



# GMS Flash Alert

Immigration Edition

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## United States - New Regulations to Increase Wages and H-1B Requirements

On October 6, 2020, the U.S. Department of Labor (DOL) released a regulation which will increase wages for the H-1B, H-1B1, E-3, and PERM labor certification programs.<sup>1</sup> The regulation is related to a new Department of Homeland Security (DHS) regulation which will raise the threshold for H-1B eligibility and impose additional requirements for offsite H-1B employment.<sup>2</sup> Both regulations will be published in the *Federal Register* on October 8, 2020, and public comments need not be considered before implementation.

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### WHY THIS MATTERS

The new DOL rule will significantly raise the minimum wages that must be paid to workers sponsored for PERM labor certification, or H-1B, H-1B1, or E-3 nonimmigrant visa classifications. If employers are unable to either meet the new wage requirements or identify suitable alternative wage sources, then budgetary constraints may necessitate limiting sponsorship of employees pursuant to the H-1B, H-1B1, E-3, or PERM programs.

The DHS rule will impact the eligibility of many current and intended H-1B workers, making it difficult, if not impossible, for certain employees to extend or amend H-1B status. Accordingly, if the rule stands, a significant percentage of the H-1B population will potentially need to depart the U.S. once their current H-1B status is no longer valid.

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### More Details

The new wage regulation is set to take effect immediately upon publication in the *Federal Register*.

The DOL relies on Occupational Employment Statistics (OES) data from the Bureau of Labor Statistics to determine the minimum wages payable in the context of the H-1B, H-1B1, E-3, and PERM programs. The prevailing wage rate is defined as the average wage paid to similarly employed workers in the area of intended employment. The OES prevailing wage is subdivided into four wage levels. The applicable wage level depends on the job duties and

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requirements of the specific H-1B, H-1B1, E-3, or PERM position.

Under the new rule, OES prevailing wage minimums will increase significantly at all four wage levels. Below is a chart which summarizes the increases to prevailing wages that will result once the new wage regulation is implemented.

Wage Level	Current Percentile	New Percentile
Level 1	17	45
Level 2	34	62
Level 3	50	78
Level 4	67	95

Source: KPMG Law LLP, Canada

It is important to note that the DOL’s regulation does not prohibit employers from relying on alternative wage sources instead of OES wage data for H-1B, H-1B1, E-3, and PERM applications. Alternate wage sources will not be subject to the DOL’s new approach to prevailing wages.

The DHS rule, entitled “Strengthening the H-1B Nonimmigrant Visa Classification Program,” will restrict the definition of “specialty occupation,” limit third-party placement of H-1B workers to one-year increments, and impose contract and itinerary requirements that had been rescinded earlier this year. This DHS rule will take effect 60 days after publication.

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## KPMG NOTE

KPMG Law LLP in Canada will continue to keep readers updated of *GMS Flash Alert* posted on any important developments as and when they occur.

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## FOOTNOTES:

- 1 For the text and status of the DOL rule, click [here](#).
- 2 For the text and status of the DHS rule, click [here](#).

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## Contact us

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