



# GMS Flash Alert

## Immigration Edition

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# United States - DOL's Minimum Wage Increase Regulation Delayed

The U.S. Department of Labor ("DOL") published a final rule on May 13, 2021, that will delay the implementation of a regulation that would have significantly increased the prevailing wage paid to workers sponsored for PERM labor certification, or H-1B, H-1B1, or E-3 nonimmigrant visa classifications.<sup>1</sup> This delay will be for 18 months, lasting until November 14, 2022. In addition, this delay will push the transition period for new prevailing wage requirements from July 1, 2021 to January 1, 2023.

One of the reasons underlying the delayed implementation is to allow the DOL time to further weigh the legal and policy issues raised by the regulation pertaining to prevailing wages. The department will also offer the public an opportunity to provide further comments regarding the impending changes to prevailing wages.

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## WHY THIS MATTERS

The regulation will significantly raise the minimum wages that employers will have had to pay workers sponsored for PERM labor certification, or H-1B, H-1B1, or E-3 nonimmigrant visa classifications.<sup>2</sup> If employers are unable to either meet the new wage requirements or identify suitable alternative wage sources, then budgetary constraints could necessitate limiting sponsorship of employees in the H-1B, H-1B1, E-3, or PERM programs.

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## Looking Ahead

As the DOL further evaluates the implementation of the regulation related to prevailing wage calculation, employers will be subject to the current prevailing wage requirements. Unrelated to this regulation, the wage data utilized by the DOL in determining prevailing wages is scheduled to undergo its regular annual update effective July 1, 2021.

The DOL intends to implement a phased approach to raising prevailing wages on an annual basis starting January 1, 2023, with the last increase to occur on January 1, 2026. While this is the DOL's current plan, the DOL may make

changes as necessary, depending on its own internal review of the relevant legal and policy issues, and the public comments received.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

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## FOOTNOTES:

1 [Federal Register: Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States: Delay of Effective and Transition Dates](#) .

2 To see a detailed explanation of the impending changes to prevailing wage calculations, see [GMS Flash Alert 2020-424](#) (October 7, 2020).

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## Contact us

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