



GMS Flash Alert

Immigration Edition

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United States - DOL's Wage Rule Vacated; Other H-1B Changes Remain Pending

A federal judge has vacated a rule by the U.S. Department of Labor (DOL) 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 classification. Although the DOL had previously announced that it was going to delay the implementation of this rule until at least November 14, 2022¹, the federal court's recent ruling stops its implementation altogether. The federal judge will continue presiding over the challenge against the DHS involving an H-1B lottery prioritization rule².

WHY THIS MATTERS

If the DOL's rule had been implemented, it would have significantly raised the minimum wages that employers would have had to pay workers sponsored for PERM labor certification, or H-1B, H-1B1, or E-3 nonimmigrant visa classifications³. If employers were 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.

A Deeper Look

While the federal court's ruling stops the DOL from implementing the wage increase rule altogether in its current format, the decision does not prevent the DOL from revising the rule at a later time.

The DOL is in the process of reviewing the comments it received from the public regarding the potential changes to the prevailing wage methodology and will further weigh the legal and policy issues raised by the change.

KPMG NOTE

Despite the agency's return to the drawing board, there is cautious optimism that the DOL may abandon the increases in prevailing wage calculations altogether, or implement a rule that would not be as detrimental to employment-based immigration to the United States.

Now, the shift in focus is on the ongoing litigation to the DHS's H-1B lottery prioritization rule. While each matter is adjudicated on its own merits, there is once again cautious optimism that there may be a favorable ruling that would stop the DHS's planned implementation of this rule.

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.

FOOTNOTES:

- 1 For prior coverage, see [GMS Flash Alert 2021-144](#), May 14, 2021.
- 2 To see a detailed explanation of the DHS's H-1B prioritization rule, see [GMS Flash Alert 2021-013](#), January 17, 2021.
- 3 To see a detailed explanation of what these minimum wages would have looked like, see [GMS Flash Alert 2020-424](#), October 7, 2020.

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