



## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations in 2023

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2023 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H-2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates DOL has determined must be offered and paid by employers to H-2A workers and workers in corresponding employment to help ensure the Department meets its statutory obligation to certify that the employment of H-2A foreign workers will not have an adverse effect on the agricultural wages of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, DOL announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology previously established in 2015.

**DATES:** The rate is effective January 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, N-5311, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693-8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1 (877) 889-5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H-2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H-2A labor certification from DOL. The H-2A labor certification provides that (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. See 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

### **Adverse Effect Wage Rate for 2023**

DOL's H-2A regulations covering the herding or production of livestock on the range, published in the *Federal Register* as the *Temporary Agricultural Employment of H-2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States*, 80 FR 62958 (Oct. 16, 2015), provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200 through 655.235 a wage that is at least the highest of (1) the monthly AEW, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by Federal or State law or judicial action. See 20 CFR 655.210(g); 655.211(a)(1). Further, when the monthly AEW is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEW upon publication by DOL in the *Federal Register*. See 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2), the monthly AEW for range occupations in all States for a calendar year is based on the monthly AEW for the previous calendar year (\$1,807.23), adjusted by the Employment Cost Index (ECI) for wages and salaries published by

the Bureau of Labor Statistics for the preceding annual period. The 12-month change in the ECI for wages and salaries of private industry workers between September 2021 and September 2022 was 5.2 percent, resulting in a monthly AEW for range occupations in effect for 2023 of \$1,901.21.<sup>1</sup> The national monthly AEW rate for all range occupations in the H-2A program in 2023 is calculated by multiplying the monthly AEW for calendar year 2022 by the October 2022 ECI adjustment ( $\$1,807.23 \times 1.052 = \$1,901.21$ ) or \$1,901.21. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the monthly AEW of \$1,901.21, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action at the time work is performed on or after the effective date of this notice.

**AUTHORITY:** 20 CFR 655.211(b).

**Brent Parton,**

*Acting Assistant Secretary for Employment and Training, Labor.*

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<sup>1</sup> The regulation at 20 CFR 655.211(c)(2) states that the monthly AEW is calculated based on the ECI for wages and salaries “for the preceding October - October period.” This regulatory language was intended to identify the Bureau of Labor Statistics’ (BLS) October publication of ECI for wages and salaries, which presents data for the September to September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 28, 2022, by BLS was used for establishing the monthly AEW under the regulations. See [https://www.bls.gov/news.release/archives/eci\\_10282022.pdf](https://www.bls.gov/news.release/archives/eci_10282022.pdf). The ECI for private sector workers was used rather than the ECI for all civilian workers given the characteristics of the H-2A herder workforce.