The Immigration and Nationality Act requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers comparably employed. To comply with the law, the U.S. Department of Labor's regulations require that the wages offered to a foreign worker must be the prevailing wage rate for the occupational classification in the area of employment. The prevailing wage rate is the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.

How Are Prevailing Wages Determined?

Employers can obtain this wage rate by submitting a request to the National Prevailing Wage Center (NPWC), or by accessing other legitimate sources of information such as the Online Wage Library, available for use in some programs. The requirement to pay prevailing wages as a minimum is true of most employment-based visa programs involving the U.S. Department of Labor. In addition, the H-1B, H-1B1, and E-3 programs require the employer to pay the prevailing wage or the actual wage paid by the employer to workers with similar skills and qualifications, whichever is higher. The U.S. Department of Labor's Bureau of Labor Statistics has provided wage data collected under the Occupational Employment Statistics (OES) program for use in the foreign labor certification process since 1998. The wage data is available on the Foreign Labor Certification Data Center Online Wage Library website.

Which Programs Require a Prevailing Wage Determination from the NPWC?

The H-2B Temporary Labor Certification application and the Permanent Labor Certification application may not be filed without a valid prevailing wage determination issued by the National Prevailing Wage Center (NPWC). For the H-1B, H-1B1, and E-3 programs, a prevailing wage application may be submitted to the NPWC, or the employer may independently determine the prevailing wage at the time it files its Labor Condition Application. The NPWC does not issue prevailing wage determinations for the H-2A Temporary Agriculture Program.
Prevailing Wage Determination Process

To request a prevailing wage determination for a Nonagricultural Immigration Program (PERM, H-1B, H-1B1, H-2B, and E-3) employers must complete the Form ETA-9141 (Application for Prevailing Wage Determination) and submit it to the National Prevailing Wage Center (NPWC). Electronic filing is strongly recommended. **Beginning Monday, June 10, 2019, the NPCW will accept online submissions of Form ETA-9141 in the FLAG System for all visa programs.**

For the H-1B, H-1B1, and E-3 programs, employers have the option of using one of three wage sources to obtain the prevailing wage:

1. Requesting a prevailing wage from the NPWC;
2. Using a survey conducted by an independent authoritative source; or

By obtaining the prevailing wage from the NPWC for the H-1B, H-1B1, and E-3 programs, employers are given "safe-harbor status." This means, if the employer's wage compliance is investigated for any reason, the U.S. Department of Labor's Wage and Hour Division will not challenge the validity of the prevailing wage so long as it was applied properly (i.e., correct geographic area, occupation, and skill level).

For the H-2A Temporary Agriculture Program, prevailing wages are the highest of:

1. The Adverse Effect Wage Rate (AEWR);
2. The prevailing wage;
3. The prevailing piece rate;
4. The agreed-upon collective bargaining wage, if applicable; or
5. The federal or state minimum wage in effect at the time the work is performed.

Office of Foreign Labor Certification

An office within the Employment and Training Administration (ETA)

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