



FACT SHEET: Understanding the 2023 Adverse Effect Wage Rate (AEWR) Rule

On February 28, 2023, the US Department of Labor (DOL) [published a final rule](#) amending the methodology for determining the Adverse Effect Wage Rate (AEWR) in the H-2A temporary agricultural work visa program (the “2022 AEWR Rule”). Farmworker Justice welcomes the Biden Administration’s decision to continue reliance on the best source of farmworker wage data for most farmworker jobs, the Department of Agriculture’s Farm Labor Survey, as well as DOL’s attempt to address adverse effects caused by the AEWR in more specialized occupations.

What is the AEWR?

When Congress created the modern H-2A temporary agricultural work visa, it required DOL to ensure that the program would “not adversely affect the wages and working conditions of workers in the United States similarly employed.” 8 U.S.C. § 1188(a)(1). This adverse effect standard is designed to ensure that agricultural employers hire available domestic workers and respond to U.S. labor market demands to improve wages and working conditions before turning to a foreign labor source.

The AEWR, initially established during [the Bracero Program](#), is a key part of DOL’s effort to fulfill its congressional mandate. Employers seeking to use the H-2A program must pay their workers—both H-2A and U.S. workers in corresponding employment—the highest of four different wage sources: (1) the state or federal minimum wage; (2) the agreed-upon collective bargaining rate; (3) the applicable prevailing wage as determined by the state; or (4) the AEWR. The AEWR, in particular, uses a market-based wage rate derived from broad federal surveys of employers to ensure that the H-2A program does not undercut the wage demands of the U.S. farm labor market.

Where does the AEWR come from?

For more than three decades, the DOL has set the AEWR using data from the USDA’s Farm Labor Survey (FLS). The FLS surveys roughly 16,000 farms and ranches each year on multiple subjects, including the number of hired farm workers, the gross wages paid to workers, and their total hours worked. The FLS reports its results for 15 multi-state regions, as well as single-state regions of California, Florida, and Hawaii.

The new rule also uses data from DOL’s Bureau of Labor Statistics (BLS) Occupational Employment and Wage Survey. The OEWS is a semi-annual mail survey of *non-farm* employers, which in the agricultural sector generally refers to farm labor contractors (FLCs). Farms increasingly rely on FLCs for certain kinds of work, such as construction or equipment operation, but the majority of field and livestock workers are still directly hired by farms rather than FLCs.

How does the 2023 H-2A Rule change the methodology?

- **AEWR for the combined field and livestock category will maintain the longstanding FLS-based methodology:** The new AEWR methodology separates the six field and livestock Standard Occupational Classifications (SOCs) that make up the vast majority of H-2A applications from other, less common occupations. See [FJ’s interactive map of FY2022 H-2A job data](#) for more on occupational categories and the field and livestock AEWR. For field and livestock workers, the new

rule's AEWL methodology will continue to use the FLS findings of the annual gross hourly wage for field and livestock workers (combined) in those states/regions where FLS data is available.

The six SOCs that make up the field and livestock category are: Farmworkers and Laborers, Crop, Nursery and Greenhouse Workers (SOC 45-2092); Farmworkers, Farm, Ranch, and Aquacultural Animals (SOC 45-2093); Agricultural Equipment Operators (SOC 45-2091); Packers and Packers, Hand (SOC 53-7064); Graders and Sorters, Agricultural Products (SOC 45-2041); and All Other Agricultural Workers (SOC 45-2099).

- **AEWR for the combined field and livestock category will use OEWS when FLS not available:** For any state or territory that lacks FLS field and livestock findings (i.e. Alaska and Puerto Rico, currently), DOL will rely on the OEWS data for the combined field and livestock SOCs.
- **AEWRs for other occupations will rely on OEWS data for the relevant SOC:** For occupations other than field and livestock (e.g. truck drivers, farm supervisors/managers, construction workers, and others), the AEWL will be the statewide annual average gross hourly wage for the relevant SOC as reported by the OEWS survey. If no statewide OEWS data is available, the AEWL for that state/region will be the OEWS national annual average hourly wage for the SOC.
- **If job order contains multiple job duties, the AEWL will be set at highest wage:** If the job duties on the H-2A application (including the job order) do not fall within a single occupational classification, and the occupations involved are subject to different AEWLs, DOL will determine the applicable AEWL at the highest AEWL for the applicable occupational classifications.
- **DOL will publish two AEWL notices annually, one for each wage survey:** DOL will update the AEWLs through two separate announcements in the Federal Register, one for the AEWLs based on the FLS, and a second for the AEWLs based on the OEWS survey, due to the different time periods for release of these two wage surveys.

What is the origin of the 2023 AEWL Rule?

The 2023 AEWL Rule follows an attempted change by the Trump Administration in 2020 which would have resulted in significant wage cuts for farmworkers. The Trump AEWL rule was blocked by a federal court and ultimately [vacated earlier](#) in 2022 in a lawsuit brought by the United Farm Workers and UFW Foundation, who were represented by Farmworker Justice and WilmerHale. The success of that lawsuit prevented the loss of more than \$500 million of farmworker wages.

The 2023 AEWL Rule reaffirms DOL's reliance on USDA's market wage survey to set the general AEWL, but it makes an adjustment for more specialized occupations, recognizing that for these occupations, an AEWL based on field and livestock wages is often much lower than the market rate and may lead to unscrupulous employers using the H-2A program to evade labor market demands.

When does the 2023 AEWL Rule go into effect?

The 2023 AEWL Rule will apply to H-2A applications filed starting on March 30, 2023. As detailed above, for field and livestock positions in states with an existing AEWL, the [2023 AEWL](#) will remain the same. Under [existing rules](#), if DOL publishes an adjusted AEWL and that wage is higher than the wage rate listed on the employer's job order and/or work contract, the employer will be required to increase the offered wage so that the wage rate offered and paid to H-2A workers and workers in corresponding employment is at least equal to the new, higher AEWL.