SOUTHERN AG TODAY

New Rules for the Calculation of H-2A Workers' Wages

Wednesday, June 28, 2023

In the last several decades, the United States has seen a continuous decline in the supply of domestic farmworkers. Economic and population growth, as well as consumer preferences, have led to an increase in the demand for hand-harvested products. As a result of the strong demand for labor-intensive agricultural commodities and the limited availability of US-born farmworkers, the H-2A program has experienced rapid growth since the first visas were issued in the 90s (Gutierrez-Li, 2021). This legal avenue allows US employers to bring farmworkers for fixed periods of time on a seasonal basis.

While the H-2A program has worked as a lifeline to many US farmers who otherwise would have gone out of business, it has been criticized by some agricultural groups as costly and overly bureaucratic. Based on the program's rules, US employers are obligated to pay for transportation from the country of origin of workers (and within the United States), compensation insurance, housing, and wages. Wages are perhaps the main source of controversy. According to the law, employers must pay their H-2A workers at least the highest of (Osti et al., 2019):

1. a minimum wage known as the Adverse Effect Wage Rate (AEWR)
2. the prevailing wage
3. the prevailing piece wage
4. the wage agreed upon a collective bargain or
5. the federal or state minimum wage

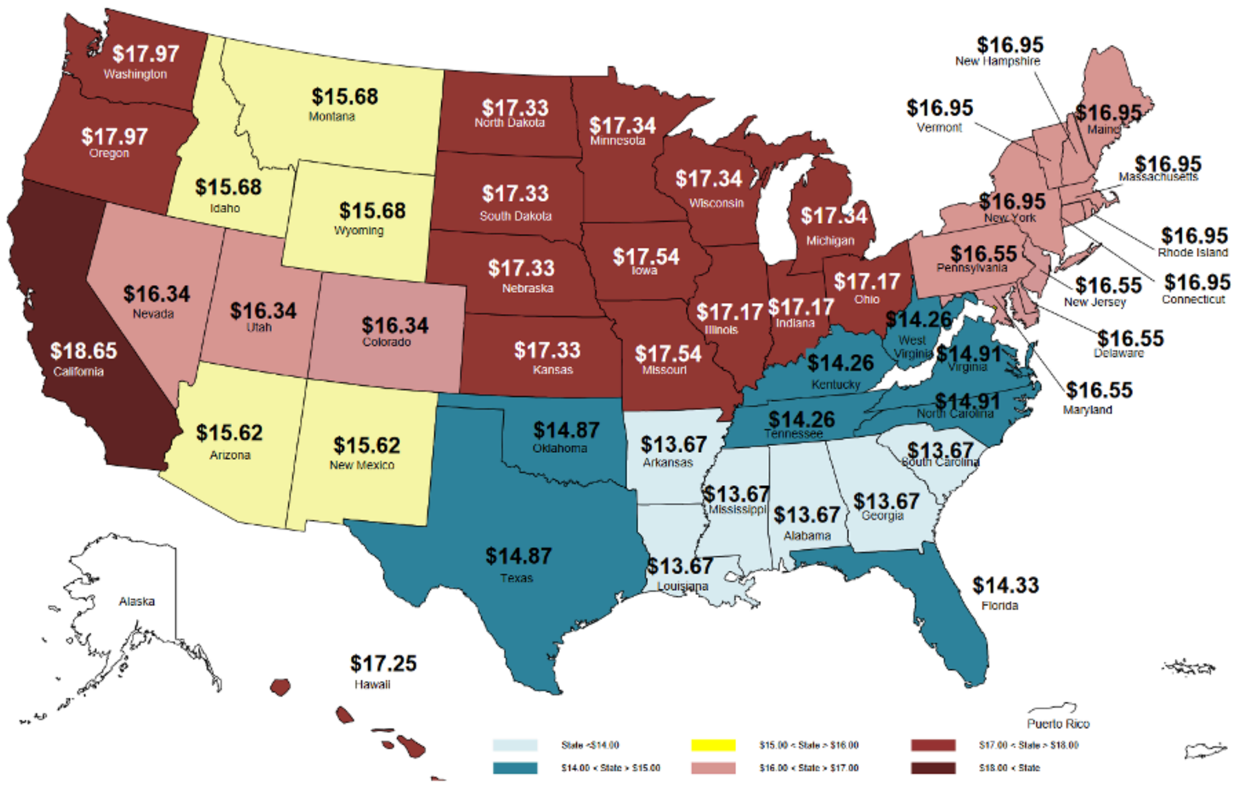
The AEWR condition is supposed to ensure that employing a foreign worker will not negatively affect the compensation of similarly qualified individuals working in related jobs. The wages differ by state and are generally set to a level above the minimum wage. All AEWRs were previously determined by surveys conducted by the US Department of Agriculture.

On February 28, 2023, the US Department of Labor (DOL) published a final rule that modifies how much H-2A workers need to be paid. The changes became effective on March 30, 2023. Specifically, the government agency introduced a new methodology for the calculation of the hourly wages of some H-2A workers. Under the previous methodology, which dates back to 2010, there were 50 different AEWRs (one per state, Figure 1). With the new rules, there could be multiple hourly wages paid to H-2A workers in each state. According to the new methodology, the DOL will continue to calculate the AEWRs for field and livestock occupations based on the US Department of Agriculture Farm Labor Surveys (FLS) whenever such information is reported. However, if the FLS does not report wages in a state or region, the DOL will instead use data from the Occupational Employment and Wage Statistics (OEWS) surveys from the US Bureau of Labor Statistics to set a statewide AEWR for workers of other categories.

Field and livestock workers include individuals who "plant, tend, pack, and harvest field crops, fruits, vegetables, nursery and greenhouse crops, or other crops" or "tend livestock, milk cows, or care for poultry," including those who "operate farm machinery while engaged in these activities." The Standard Occupational Classification codes (SOCs) and titles associated with these workers are: 45-2041 (Graders and Sorters, Agricultural Products), 45-2091 (Agricultural Equipment Operators), 45-2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse), 45-2093 (Farmworkers, Farm, Ranch, and Aquacultural Animals), 53-7064 (Packers and Packagers, Hand), and 45-2099 (Agricultural Workers, All Other) (Department of Labor, 2023). For all other occupations, the DOL will set a statewide annual average hourly wage based on OEWS data. Additionally, if a job includes multiple tasks (thereby giving room for it to involve multiple occupations), the highest wage rate will be chosen.

It is too early to determine whether the new methodology will achieve the goal (of the government) of paying fairer wages to H-2A workers performing tasks that require more training or skills like van or truck driving. However, the new rule has already faced strong opposition from farming groups (Agriculture Workforce Coalition, 2023), which sued under the argument that it will make the H-2A program more costly and cumbersome than it already is. It remains to be seen how easy it will be for the government to classify workers' occupations in practice and if employers will strategically classify workers to affect the wages they pay.

Figure 1. 2023 H-2A Adverse Effect Wage Rates



Source: U.S. Department of Labor.

References

American Workforce Coalition. (2023). Letter to the House and Senate.

Gutierrez-Li, A. (2021). The H-2A Visa Program: Addressing Farm Labor Scarcity in North Carolina. NC State Economist. North Carolina State University.

Osti, S., Bampasidou, M., & Fannin, J. M. (2019). Labor-Intensive Multiple Cropping Systems and the H-2A Program. Choices, 34(1), 1-6.

US Department of Labor. (2023). 2023 H-2A Adverse Effect Wage Rate (AEWR) Final Rule FAQs. Office of Foreign Labor Certification.

Gutierrez-Li, Alejandro. "New Rules for the Calculation of H-2A Workers' Wages." *Southern Ag Today* 3(26.3). June 28, 2023. Permalink

Alejandro Gutierrez-Li

NC STATE EXTENSION