

# GROWERTALKS

JZ on D.C.

9/30/2026

## Judge Sends IFR Adverse Effect Wage Rate back to DOL

*Jennifer Zurko*

### **Judge Sends IFR Adverse Effect Wage Rate back to DOL**

In August, a federal court ordered that the Department of Labor (DOL) must rewrite the interim final rule (IFR) from October 2025 on farmworker wages, putting additional pressure on Congress to come up with a solution. The U.S. District Court in the Eastern District of California ruled against the DOL in the *United Farm Workers (UFW) v. DOL* litigation on the Adverse Effect Wage Rate Methodology (AEWR) for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States Interim Final Rule (IFR). The IFR was a big win for agriculture and the horticulture industry.

The Court found the IFR invalid and remanded it to DOL without vacating. This means the status quo remains in effect until a new rulemaking process is initiated. While the Court appears sympathetic to the second requested remedy of back pay for any difference arising from a new wage methodology, the Court refused to grant that relief, indicating it's too speculative that any difference would result. So we are in a holding pattern until the new Notice of Proposed Rulemaking (NPRM) process.

There's no change right now, but at some point, the DOL will publish an NPRM on this and accept comments. After the comment period, a final rule will be published to implement the new AEWR. The period from the order until the new AEWR takes effect will be the potential back wages period. The Court reserved jurisdiction to rule on the back wages once the new AEWR is established.

### **What the court found**

The U.S. District Court for the Eastern District of California found four key elements of DOL's 2025 Interim Final Rule to be arbitrary and capricious:

- The current two-tier Skill Level I and Skill Level II wage structure
- The housing adjustment used in calculating AEWRs
- DOL's use of Occupational Employment and Wage Statistics (OEWS) data
- The "greater than 50%" rule used to determine occupational classifications

The court also found that DOL did not adequately justify bypassing the normal notice-and-comment process for several components of the rule. The court did, however, recognize that DOL had good cause to act quickly in selecting a replacement wage-data source after USDA discontinued the Farm Labor Survey.

### **Next steps**

The court directed DOL to promptly develop and publish a new AEWR methodology and replacement wage rates consistent with the court's decision. The court also left open the possibility that employers could eventually be required to make wage adjustment payments if the replacement AEWRs exceed wages paid during the applicable interim period. No backpay or wage adjustments have been ordered at this time.

DOL must notify state workforce agencies, employers and the public about the potential for future wage adjustments. The court will continue to oversee the case and the parties must provide an initial status report within two weeks, outlining DOL's progress and the anticipated timeline.

### **What you should do**

While the replacement methodology is being developed, employers should:

- Continue paying the wage currently required under their approved H-2A job orders
- Maintain complete payroll and employment records
- Keep accurate records of worker duties and occupational classifications
- Maintain current contact information for H-2A and corresponding U.S. workers
- Monitor DOL communications and additional court developments
- Consult with their H-2A agent or legal counsel before making changes to wage practices or job classifications

### **Bottom line**

There is no immediate change to H-2A wages. Employers should continue following their existing approved job orders and current H-2A wage requirements. The significant issue moving forward is what methodology DOL adopts and whether employers will be required to make wage adjustments for an interim period. Until DOL issues additional guidance and replacement AEWRs are established, employers should maintain normal compliance and thorough records.

AmericanHort has been in contact with the White House, the Administration, DOL, USDA, DHS, the House, the Senate, Chairman GT Thompson's staff and other industry partners to figure out the next steps. More information will be shared as it becomes available.

This decision only amplifies the need for a long-term, permanent solution to the agricultural labor workforce issue. Congress can provide that, with full support from AmericanHort and the entire agricultural industry, to support and pass H.R. 9535, the Securing Agriculture's Workforce Act (SAWA). Please contact AmericanHort for a summary of the case from their outside counsel, JPH Law, or if you have questions. **GT**

—Matt Mika, AmericanHort

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