

Client Alert

Trump Administration Announces New Interim Final Rules to Tighten Visa Requirements for High Skilled Foreign Workers

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New interim final rules published by the Department of Homeland Security (DHS) and the Department of Labor (DOL) on October 8, 2020 will make it significantly more difficult for highly skilled foreign workers to meet the eligibility criteria for the H-1B visa application.

The new interim final DOL rule requires employers to pay much higher wages to H-1B employees. Currently employers must pay the higher of the actual wage level paid to other workers with similar experience and qualifications or the “prevailing wage” level for the occupational classification as determined by the DOL Occupational Employment Statistics (OES). Depending on the wage level, the OES wage minimums which currently are between 17 to 67 percentiles, will be raised to 45 to 95 percentiles under the new DOL rule. This increase effectively raises the wages sponsors of H-1B visas have to pay to obtain employment-based immigration visas for their foreign employees.

The new interim final DHS rule changes the definition of a specialty occupation for the H-1B visa to require a more direct link between the foreign worker’s educational degree or equivalent amount of experience and the specialty occupation for the H-1B visa. It is also expected that the new rule will limit the ability of H-1B worker hired by one company to work for another company as such arrangements will receive stricter scrutiny. Site inspections of H-1B workplaces may also increase as the new rule officially authorizes such site inspections from the U.S. Citizenship and Immigration Services, even though the agency has been conducting site inspections for many years.

These DOL rule take effect immediately on October 8, 2020, but DOL will accept public comments for 30 days. The DHS rule will take effect after a 60-day public comment period.

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