LEGAL UPDATE

HR
Payroll
Benefits
Workers' Comp

DOL Issues Proposed Rule Revising Prevailing Wage Methodology for H-1B, PERM Visa Programs

HIGHLIGHTS

- On March 27, 2026, the DOL published a proposed rule to change prevailing wages calculations for certain visa programs, including H-1B, H-1B1, E-3 and the PERM program for EB-2 and EB-3 employment-based visas.
- The proposed rule would significantly increase the minimum wages employers must pay across all four prevailing wage levels.
- The 60-day comment period for the DOL's proposed rule ends on **May 26, 2026**.

The U.S. Department of Labor (DOL) published a proposed rule to change how prevailing wages are calculated for employers seeking to hire foreign workers under H-1B, H-1B1 and E-3 visa programs and permanent labor certification under the Permanent Labor Certification (PERM) program for EB-2 and EB-3 employment-based visa programs. The 60-day comment period for the DOL's proposed rule ends on **May 26, 2026**.

Background

Under current law, U.S. employers seeking to hire temporary foreign workers through the H-1B, H-1B1 or E-3 visa programs must pay foreign workers the higher of the prevailing wage for the area of intended employment or the actual wage rate paid to similarly qualified U.S. workers in the area of intended employment. For employers seeking to hire foreign workers permanently through the PERM program, employers are required to offer and pay foreign workers at least the prevailing wage for the job opportunity in the area of intended employment. This prevailing wage serves effectively as a wage floor, and an employer must attest that they are offering at least the prevailing wage at the time of filing, that the wage offered during recruitment is at least the prevailing wage, and that the employer will actually pay at least the prevailing wage when a foreign worker begins their employment.

Key Highlights

The DOL proposes to substantially increase the Occupational Employment and Wage Statistics (OEWS) percentile levels used to set the four prevailing wage levels as follows:

OEWS Wage Level	Current Percentile Levels of OEWS Wage Distribution	Proposed Percentile Levels of OEWS Wage Distribution
Level 1 (Entry)	17th Percentile	34th Percentile
Level II (Qualified)	34th Percentile	52nd Percentile
Level III (Experienced)	50th Percentile	70th Percentile
Level IV (Fully Competent)	67th Percentile	88th Percentile

According to the DOL, the proposed rule will better align prevailing wage levels with wages paid to U.S. workers who are similarly employed in the occupation and area of intended employment.

Employer Takeaway

The DOL's proposed rule would significantly increase the minimum wages employers must pay across all four prevailing wage levels. Employers should monitor for updates on the proposed rule.