

SUPPLEMENTAL PREVAILING WAGE DETERMINATION FAQs

Question: I'm an H-2B employer, and I currently have workers in the U.S. who will be working for me beyond September 30, 2011. I understand that as of September 30, 2011, my H-2B workers and workers recruited in connection with the H-2B application must be paid new wage rates. How do I get that new PWD? Can't I just look at the Online Wage Library?

Answer: The H-2B Final Rule that was published on January 19, 2011 establishes a new prevailing wage methodology under the H-2B program. This new prevailing wage methodology will apply to wages for all work performed by H-2B workers and workers recruited in connection with the H-2B application on or after September 30, 2011.

An employer with a Prevailing Wage Determination (PWD) issued before July 1, 2011 will be provided a new PWD by the National Prevailing Wage Center (NPWC). The employer cannot rely on the OES mean wage on the Online Wage Library alone to determine the prevailing wage rate that would apply as of September 30, 2011. Because the prevailing wage will be based upon the highest of: the wage established under an agreed-upon collective bargaining agreement; a wage rate established under the Davis-Bacon Act or the Service Contract Act for that occupation in the area of intended employment; or the arithmetic mean wage rate established by the OES, the employer must be informed by the NPWC which of the wages is the highest based upon its analysis of the job duties and work location.

Question: If an H-2B employer received a prevailing wage from the NPWC prior to August 1, 2011 and wants to advertise now for work which will be performed after September 30th, but does not have a new wage determination, must it wait for the new H-2B wage determination before starting recruitment?

Answer: If an employer's most recent PWD from the NPWC was issued before August 1, 2011, the employer may recruit at that prevailing wage. The employer must, however, include in the ad that "the wage will change for work performed on and after September 30, 2011 based on new U.S. Department of Labor prevailing wage regulations."

Question: What if I have already conducted my recruitment using a prevailing wage determination I received before July, but have not as yet filed my H-2B application?

Answer: An employer that has already conducted the required recruitment based on a PWD that was issued before July, but has not yet filed its application, may rely on that recruitment to file its application. However, the NPWC will be issuing a new PWD, which the employer must use for work performed on or after September 30, 2011, regardless of the wage set forth in the recruitment and application.