# Employment Visas (H1B, E-3, PERM) and New Interim Final Rules 10/15/2020 12:00 to 1:15 PM



### **US Department of Labor (DOL) Interim Final Rule**

Published 10/08/2020; effective 10/08/2020 30-day comment period, with comments due by November 9, 2020

#### **Background**

- H-1B, E-3 petitions, and PERM (Labor Certifications) applications require a Prevailing Wage (PW) determination and DOL Certification that the position being sponsored for H-1B/E-3/PERM meets the Prevailing Wage (ie, the offered salary is equal or higher than the PW).

  DOL wage data provides 4 wage levels, depending on the seniority of the positions or its requirements in comparison to DOL's minimum requirements for the occupation: Level 1; Level 2; Level 3; Level 4.
- For example, if DOL considers the minimum education requirement for the position as a bachelor degree; but the employer requires a master's degree, the position will be a Level 2. If the employer requires a PhD, the position will be a Level 3.
- As an exception, Postdoctoral positions are generally considered Level 1 (entry level), unless there are
- elements in the job description that go beyond DOL parameters and raise the wage level.

   Most Assistant Professors are Level 1 because they are considered entry level; again, unless there are elements in the job description that go beyond DOL parameters and raise the wage level



## **US Department of Labor (DOL) Interim Final Rule Cont'd**

- To protect jobs for US workers, the Interim Final Rule (IFR) raises minimum salary levels required to sponsor H-1Bs/E-3s/PERMs.
- The rule will have significant impacts on H-1Bs, E3, PERMs.
  In many cases, the new PW requirements dramatically increase minimum wages, most of them by \$10,000 or more
- Non-teaching/faculty positions such as Postdocs are the most affected.
- Valid H-1Bs/E-3s; those pending with USCIS; those in preparation in our office, with LCA (Labor Condition Applications) already certified or submitted; are not impacted
- DOL will use the new data to determine the PW for new or pending PW requests for PERM cases.
- PERM applications already submitted with DOL are not impacted
- New H-1B/E-3 hires and extension petitions (without a valid LCA) will be impacted.



## **US Department of Homeland Security Interim Final Rule**

- Published 10/08/2020; effective 12/072020; 30-day comment period, with comments due by November 9, 2020
- The IFR aims at strengthening the H-1B program by narrowing the definition of "specialty occupation."
- To qualify for an H-1B, a position must be in a specialty occupation, ie a specialized job that requires a minimum of a bachelor degree in a specific area that is related to the job.
- The new rule requires that the degree be **DIRECTLY** related to the job
- It is estimated that 30% of jobs that were previously eligible for an H-1B will no longer be eligible.
- Delays in petition processing can be expected
- Increase in petition denials can be expected
- Well documented H-1B petitions will be required



#### **Advocacy and Lawsuits**

- The American Immigration Lawyers Association (AILA) is looking for plaintiffs, including institutions, to challenge the DOL rule
- The US Chamber of Commerce (and others) is planning to challenge the DHS rule
- Arguments include faulty methodology/stats/computation of new PWs; and argument that the current high unemployment rate and the need to protect US workers does not constitute sufficient good cause to by-pass Notice and Comments generally required to issue a new rule; ie there is not an emergency situation; there is no risk of severe harm; it is practicable and necessary that the American public is given sufficient notice and the opportunity to comment on such a significant change.
- If lawsuit is successful, query whether it's going to be a nationwide injunction vs relief for the named plaintiffs in the case; hence joining litigation as plaintiffs highly recommended.



# **Prevailing Wage Increases- Examples**

Code	Occupation	Level 1 before 10/08/20	Level 1 After 10/08/2020	Percentage Difference
19-3039 Geo 4	Psychologists, all other	47,965	86,944	81%
19-2031 Geo 4	Chemists	42,994	57,553	34%
19-2012 Geo 4	Physicists	54,101	73,195	35%
19-1029 Geo 3	Biological Scientist	47,258	66,893	42%
17-2041 Geo 4	Chemical Engineers	45,074	57,699	28%
17-2144 Geo 4	Mechanical Engineers	29,061	55,557	91%
17-2053 Geo 4	Civil Engineers	38,438	64,605	68%
17-2073 Geo 4	Electrical Engineers	55,786	73,986	33%



# **Prevailing Wage Increases- Examples**

Code	Occupation	Level 1 before 10/08/20	Level 1 After 10/08/2020	Percentage Difference
25-1021 Geo 1	Computer Science Teachers	69,590	90,700	30%
25-1052 Geo 1	Chemistry teachers	59,310	78,410	32%
25-1032 Geo 1	Engineering teacher	50,480	71,720	42%
25-1022 Geo 1	Mathematics teachers	48,940	71,720	47%
25-1054 Geo 1	Physics Teachers	75,020	114,670	53%
25-1063 Geo 1	Economics Teachers	92,720	Data Not available	116%
25-1065 Geo 1	Political Science Teachers	49,410	71,720	45%
25-1011 Geo1	Business Teachers	67,720	89,640	32%
25-1021 Geo 1	Computer Science Teachers	69,590	90,700	30%
25-1052 Geo 1	Chemistry teachers	59,310	78,410	32%
25-1032 Geo 1	Engineering teacher	50,480	71,720	42%

#### What are our Options?

OPT/OPT STEM (Optional Practical Training) J-1 Student- Academic Training J-1 Scholars- Exchange Visitors TN (for Canadians and Mexicans) Alternative Wage Surveys



## **How to Determine PW-Step1: Go to OFLC Data Center**





#### **Step 2: Search Wizard; Louisiana; Continue**



Quick Search Search Wizard

ase Disclosure
Pata Archive
H1B Data
H2A Data
H2B Data
Perm Data

#### Online Wage Library - FLC Wage Search Wizard

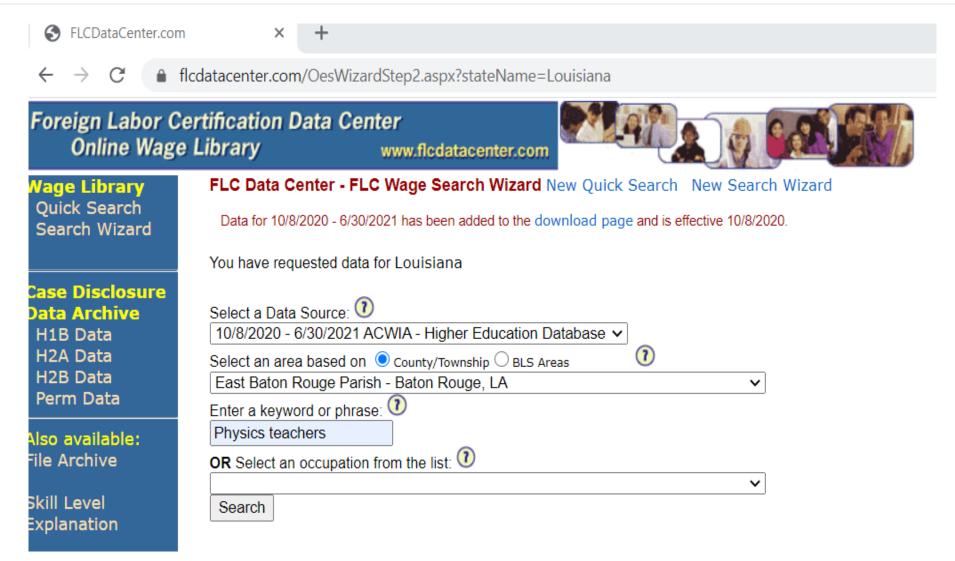
Data for 10/8/2020 - 6/30/2021 has been added to the download page and is effective 10/8/2020.

Select a State/Territory:	
Louisiana 🗸	Continue

If you know the BLS Area Code and the OES/SOC Occupation Code or Title try using the faster OES Quick Search.

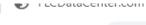


# Step 3: Select 10/08/20 to 06/30/21 Higher Edu Industry; County/Parish; Key word or code; click Search





### **Step 4: View Wages**



#### Foreign Labor Certification Data Center Online Wage Library

www.flcdatacenter.com



#### Wage Library

Quick Search Search Wizard

#### Case Disclosure Data Archive

H1B Data H2A Data H2B Data Perm Data

#### Also available: File Archive

Skill Level Explanation

SVP Explanation

FLC Wage Data updated October 8, 2020

Job Zones updated October 8, 2020 See change history

#### FLC Wage Results New Quick Search New Search Wizard

You selected the ACWIA - Education Industry database for 10/8/2020 - 6/30/2021.

Your search returned the following: Print Format

Area Code: 12940

Area Title: Baton Rouge, LA

**OES/SOC Code:** 25-1054

**OES/SOC Title:** Physics Teachers, Postsecondary

GeoLevel: 1

 Level 1 Wage:
 \$114,670 year

 Level 2 Wage:
 \$165,050 year

 Level 3 Wage:
 \$215,430 year

 Level 4 Wage:
 \$265,810 year

 Mean Wage (H-2B):
 \$132,990 year

This wage applies to the following O\*Net occupations:

#### 25-1054.00 Physics Teachers, Postsecondary

Teach courses pertaining to the laws of matter and energy. Includes both teachers primarily engaged in teaching and those who do a combination of teaching and research.

O\*Net™ JobZone: 5

Education & Training Code: 2-Doctoral degree

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the Skill Level page.

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.



#### Resources

- DOL rule: 150 Pages. Read on the Federal Register site.
- DOL Frequently Asked Questions
- DHS rule: 147 Pages. Read on the Federal Register Site.
- Foreign Labor Certification Data Center

#### Supplemental Reading – Press Releases

- White House Press Release
- Department of Homeland Security Press Release
- <u>US Department of Labor Press Release</u>
- Press Release from Forbes



## QUESTIONS?

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Vragen?
¿Preguntas?; Sorular?
                               Perguntas?
     Domande?
                         Shitsumon wa arimasu
 Câu hòi?; Savāla?
  Fragen?; Dotazy?
                               Kum tum?
    Preguntes?
                           Tanong?; Jilmun?
     Pytannya?
                          Kesyon?; Kit'Khvebi?
 Sorular?; Maswali?
                              Kysymyksiä?
   Yŏu wèntí ma?
                               Mafunso?
    Ερωτήσεις;
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# THANK YOU

