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Common Questions Regarding the 2025 AEWI Interim Final Rule

The information provided below reflects our current understanding of the 2025 AEWI Interim Final Rule. Individuals and companies should also consult their agents and legal counsel for specific guidance surrounding their obligations and requirements under the 2025 AEWI Interim Final Rule. Until the government reopens, we are awaiting additional information and guidance from the Department of Labor.

1. When does this new rule go into effect? Specifically with the shutdown?

The rule went into effect upon publication in the Federal Register on October 2, 2025. However, due to the government shutdown the Office of Foreign Labor Certification (“OFLC”) is unable to receive new applications as of October 2, 2025. OFLC will not accept any new applications for H-2A employees until the government reopens or H-2A applications are deemed essential work.

2. Skill Level I and II: How does this work? What criteria should employers use in determining whether a job is considered skill I or skill II?

The primary criteria will be experience/enunciated skills required. The Level I “entry level” represents the mean of the lower one-third of workers in a given occupational wage distribution, and the Level II “experienced” represents the mean of all workers in a given occupational wage distribution, which is a computation that has been used to set AEWIs in the H-2A program for many decades.

Adding additional qualifications over the Level I wage, such as additional experience requirements (which is generally less than 3 months) or skill requirements (color picking apples or experience with pesticide application) will result in a Level II wage. However, the IFR assumes that the vast majority of applications will be certified with Level I wages, unless additional experience is required such as being able to determine when first pick is ready to harvest, generally more than 3 months of experience on farm, certifications for pesticides, or if additional supervisory requirements are included. Level I wages are meant for truly entry level jobs that provide on the job training or require little if any experience.

3. Could you also explain how the five levels within the OEWS are determined, and how the IFR translates those levels into a skill I and skill II AEWI?

There are only four levels within the OEWS wage system. The IFR issues a Level I wage that is roughly the 17th percentile of the four levels wage distribution and a Level II wage, would be the mean wage of all four OEWS wage levels.

4. Is the skill level determined by the experience of the worker or the requirements of the job order?

The wage level is set by the requirements of the job order, not the experience or skill of the work filling the job order.

5. Can a single job order include tasks with the same SOC code but different skill levels (and therefore different AEWRs)? (For example, can an employer include pruning apple trees as a skill I task and color picking Gala apples as a skill II task on the same job order – recognizing that the experience requirements will be different and it may be that only a subset of the workers are able to conduct the skill II tasks – and then pay the workers the skill I AEWR while pruning and the skill II AEWR while color picking Galas? This is similar to the current approach where a single job order covers multiple job tasks that are subject to different AEWR or prevailing wage rates, or even when the employer chooses to offer a piece rate wage absent a prevailing piece rate wage in place.) Alternatively, can a job order classified as skill two include some skill one tasks that overlap a separate “skill I-only” job order?

If a job order has tasks that are both Level I and Level II qualifications it would likely be issued a Level II wage. The reason being is that every employee hired on a job order would need to be able to complete all tasks on the job order, even if the employer intends to only employ more skilled workers to do the skilled task and less skilled workers to do the less skilled tasks.

6. If the downward adjustment brings the AEWR below the state minimum wage, is the employee required to pay the state minimum wage or the AEWR?

The employer may never pay less than the federal, state, or local minimum wage.

7. How should we describe the standard downward housing compensation adjustment to our growers so that we mirror DOL’s language and approach?

The Adverse Compensation Adjustment is provided to account for the fact that corresponding domestic workers not living in employer provided housing must utilize the same wage rate paid to H-2A employees to pay for rent/mortgage, insurance, utilities, food, and transportation. So the argument is that this is discriminatory against the domestic worker who realizes less of the wage benefit and the Rules solution is to allow an offset to reduce the wage of the foreign worker in order to achieve greater equity.

8. How do the new rates and skill levels affect non-H-2A workers? What about non-H-2A workers who receive employer-provided housing (per H-2A requirements, or otherwise)?

The IFR does not do away with the concept of corresponding employment, so any wage rate certified in a job order would be required, at a minimum, to be paid to workers in corresponding employment. Remember the AEWR is a wage floor, that means that corresponding workers can be paid a higher wage rate than the AEWR if the employer so chooses, however the ability to receive additional wages should be disclosed in the job order so potential domestic workers are not dissuaded from applying for the position.

9. If an H-2A worker chooses to stay with a family member or otherwise secure their own housing (and therefore declines employer-provided housing), is it correct that employers would still apply the housing adverse compensation adjustment?

At this point it is unclear if an employer would still be able to take the Adverse Compensation Adjustment for an H-2A worker who chooses to not live in employer provided housing. There is a legitimate argument to be made that H-2A employers are still required to provide a bed to an H-2A worker that does not live in employer provided housing and therefore the Adverse Compensation Adjustment should still be allowed, however the IFR is unclear on this and additional guidance will be sought from OFLC once the government reopens.

10. Please describe how an employer determines what wage to pay an H-2A worker or one in corresponding employment under this rule, including at what point the adverse compensation adjustment is applied. Is this different for cases where the employer is a farm labor contractor?

The wage to be paid on a job order is determined by OFLC and the State Workforce Agency. They will review the job order for required experience, qualifications, and job duties and determine the SOC code and level based on those requirements. Workers in corresponding employment will be required to be paid, at a minimum, that wage and wage level associated with the SOC code assigned to the job order. There should be no difference in a fixed site grower and a farm labor contractor.

11. If a state minimum wage changes in the middle of a contract and is “triggered”, how does that impact existing contracts?

Like previous rules, if the wage increases during the contract (regardless of if it is the AEW or a minimum wage change) the employer must make an adjustment to pay the highest wage. If the wage goes down during the contract the employer is not allowed to adjust down.

12. If an employer has traditionally required three months experience for a position but reduces that to one or two months on their job order will that raise flags in terms of DOL approval and/or drawing litigation? (asking because 3 months seems to be the threshold for level II in IFR)

Any changes year over year of requirements of experience or job duties should be thoroughly explained to OFLC in the application process.

13. Does the adverse compensation adjustment apply to domestic migrant workers who stay in employer housing and are in corresponding employment with the H-2A workers?

As described in the IFR, corresponding workers living in employer housing are not eligible for the Adverse Compensation Adjustment.

