FARMWORKER JUSTICE

Adverse Effect Wage Rate Rule

The purpose of the Adverse Effect Wage Rate (AEWR) is to overcome and prevent depression in prevailing wages. In 2009, the Bush Administration changed the regulations governing the H-2A program, including the methodology for determining the AEWR, which resulted in an average of $1 to $2 decrease in hourly wages for H-2A workers. Secretary of Labor Hilda Solis reinstated the previous methodology for H-2A applications filed after March 2010. Farmworker Justice supports the reinstatement, but believes that rates under the program are still too low.

Here's a chart of AEWRs from 2000 to 2011

Why are wage rates controversial under guestworker programs?

Guestworker programs are created to fill alleged shortages of labor. If an employer recruits workers at such low wage levels that U.S. workers refuse to apply for jobs, the employer could create an artificial "labor shortage." Meanwhile, there will be many foreign citizens in poorer nations who would accept such substandard wage rates. Guestworker programs usually contain some protections against wage depression. Workers and employers often disagree about the required wage rates.

What are the wage rates in the H-2A agricultural guestworker program?

Under current Department of Labor regulations, employers in the H-2A program have to pay the highest of three wages:

- the federal or state minimum wage (e.g., the Federal rate is $7.25 per hour, some state minimum wages are higher, California's is $8.00 per hour).
- the "prevailing wage," as determined by the Department of Labor using a special H-2A methodology to conduct wage surveys for each particular task in very local areas. It is expressed in the prevailing method of payment (for example, a piece rate, or an hourly wage rate). The prevailing wage is ordinarily the local median wage for that particular job.
- the H-2A "adverse effect wage rate" or "AEWR." The AEWR is the regional weighted average hourly wage rate for field and livestock workers combined, as measured by the Department of Agriculture's (USDA) annual Farm Labor Survey of non-supervisory farm and ranch workers. Most regions include more than one state. When the prevailing wage is a piece rate, employers may pay by the piece but must guarantee that workers earn at least the AEWR on an hourly basis.

The Bush Administration changed the formula for calculating this wage rate resulting in an average decrease of over $1/hr (and up to $2/hr in some places). The Obama Administration's regulations restored the previous wage rate formula.

Why was the Adverse Effect Wage Rate requirement established?

The AEWR was established during the Bracero program (a previous guestworker program for farmworkers from Mexico that ended in 1964) and applied to the H-2A program. The law guaranteed that guestworkers would not "adversely affect" the wages of U.S. workers. To prevent "adverse effects," the programs required employers to pay at least the local "prevailing wage" for the specific job. But wage rates at employers that hire guestworkers often become stagnant and ultimately depressed, hurting both foreign workers and U.S. workers. The purpose of the AEWR is to overcome and prevent depression in prevailing wage rates.

Why can't workers negotiate their wage rates in the H-2A program?

First, guestworkers hold a limited, "nonimmigrant," temporary work visa. If they want to keep their job and remain in the U.S., they must keep their employer satisfied. If they want to return the following season, they must hope that the employer invites them back and applies for a visa for them. Many guestworkers are afraid of losing the right to work in the U.S. and therefore will not ask for a pay increase. Second, by law, the H-2A program permits employers to reject any job applicant who demands a wage rate higher than the rate approved by the government. A U.S. worker who demands a higher wage rate can be rejected or fired as "unavailable" for the job and replaced by a guestworker. By shielding employers from workers' and labor unions' demands for higher wages and other market forces, a guestworker program's "minimum" standards often become the employer's maximum offer.

Why is the AEWR necessary if the H-2A program already has a "prevailing wage"?

The "prevailing wage," under the Department of Labor's special definition for the H-2A program, is based on small-scale wage surveys of employers in very local areas for very specific job tasks, for example, picking apples in Western upstate New York, or pruning apple trees in the Hudson Valley in NY. A company applying for H-2A workers in such a local area often has been using undocumented workers or guestworkers, so the prevailing wage has been depressed by the presence of undocumented or guest workers. The adverse effect wage rate (AEWR), by contrast, is based on USDA wage surveys of nonsupervisory farmworkers in numerous occupational categories and in broader geographic areas. The prevailing wage is almost always lower than the Adverse Effect Wage Rate. Frequently, the "prevailing wage" is a piece rate that yields very low hourly incomes.

Are the wage rates in the H-2A program too high?

No. The formula described above was set by the Reagan Administration, which lowered H-2A wages by an average of 20%. They vary by state; most are between $9.12 and $11.03 per hour. In fact, the H-2A wage rates are not high enough. First, the USDA survey that DOL uses for the AEWR measures the average wage rates. Employers that have a hard time finding US workers should compete against other employers by offering more than the average wage to attract and retain workers. Second, the AEWR is based on the previous year's wage rates and does not reflect inflation. Third, the USDA surveys of the average wage include the 55% or more of farmworkers who are undocumented, so the wages are depressed compared to what they would be if only U.S. citizens and authorized immigrants had the job. In addition, the AEWR's, by themselves, also do not prevent employers from imposing very high productivity standards that desperate foreign workers will accept but that would cause U.S. workers to insist on higher wages.