

BUSINESS IMMIGRATION MATH 101

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WHAT IS THE PREVAILING WAGE?

- Not concisely defined by regulation
 - Labor Condition Application (LCA) – 20 CFR.731
 - Labor Certification – 20 CFR 656.40
- The prevailing wage is the amount paid by other employers in the local area for positions within the same occupation that require an equivalent level of education/experience

WHEN DO YOU NEED IT?

- Nonimmigrant
 - Labor Condition Application: H-1B & E-3
 - Employer required to pay the higher of the prevailing wage or the actual wage
 - Can estimate the prevailing wage without DOL endorsement, but subject to scrutiny
 - Can seek Prevailing Wage Determination from DOL to obtain safe-harbor protection
 - Temporary Employment Certification: H-2A & H-2B

WHEN DO YOU NEED IT?

- Immigrant
 - PERM Labor Certification
 - Employer must pay at least the prevailing wage upon approval of the green card
 - Must seek a Prevailing Wage Determination from DOL

WHY SHOULD YOU CARE?

- It's a case killer – a mishandled prevailing wage can lead to denials or revocations
- Unchallenged DOL error can cause overpayments
- Unscrupulous employers harm everyone when they illegally underpay. Don't be a part of that.
- Prevailing wage abuses feed into anti-immigrant narratives about job theft, undermining U.S. wages, etc.

WHY SHOULD YOU CARE?

Recent enforcement trends show increased risk to employers relating to prevailing wage issues

- Scrutiny of inconsistencies between H-1B and PERM
- USCIS wage level RFEs
- DOL investigations can open the door to much wider investigations of employer for FLSA violations, etc.
- Negative press coverage can result

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