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A brief overview of the H-2A Agricultural Visa Process

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Section 1: The offered wage rate, 20 CFR 655.120

According to 20 CFR 655.120 section (a), an employer must offer, advertise in its recruitment, and pay a wage that is the highest of the Adverse effective wage rate (AEWR), the prevailing hourly wage or piece rate, the agreed-upon collective bargaining wage, or the federal or state minimum wage, except where a special procedure is approved for an occupation or specific class of agricultural employment.¹ In the vast majority of cases, the wage rate paid to the H-2A workers (and corresponding U.S. workers) is the AEWR.

The AEWR is the regional weighted average hourly wage rate for field and livestock workers combined, as measured by USDA's annual Farm Labor Survey of non-supervisory farm and ranch workers.² It was created to ensure that foreign worker wages will not depress the wages of domestic workers in similar occupations.³ When agricultural employers offer employment to nonimmigrant foreign workers, payment of at least the AEWR is required. This wage rate is published once a year, typically in early January or February, by DOL with the assistance of the U.S Department of Agriculture. The table below provides the list of the current Adverse Effect Wage Rate of each state. The AEWRs were published in the Federal Register on December 19, 2021 and effective on January 2, 2022.

Table 1.

STATE	2022 AEWR
Alabama	\$11.99
Arizona	\$14.79
Arkansas	\$12.45
California	\$17.51
Colorado	\$15.58
Connecticut	\$15.66
Delaware	\$15.54
Florida	\$12.41
Georgia	\$11.99
Hawaii	\$16.54
Idaho	\$14.68
Illinois	\$15.89
Indiana	\$15.89
Iowa	\$16.19
Kansas	\$16.47

¹ 20 C.F.R. § 655.120 (2020).

² *Adverse Effect Wage Rate*, U.S. DEP'T OF LABOR, <https://www.dol.gov/agencies/eta/foreign-labor/wages/adverse-effect-wage-rates> (last visited Aug. 26, 2022).

³ *Id.*

STATE	2022 AEW
Kentucky	\$13.89
Louisiana	\$12.45
Maine	\$15.66
Maryland	\$15.54
Massachusetts	\$15.66
Michigan	\$15.37
Minnesota	\$15.37
Mississippi	\$12.45
Missouri	\$16.19
Montana	\$14.68
Nebraska	\$16.47
Nevada	\$15.58
New Hampshire	\$15.66
New Jersey	\$15.54
New Mexico	\$14.79
New York	\$15.66
North Carolina	\$14.16
North Dakota	\$16.47
Ohio	\$15.89
Oklahoma	\$13.88
Oregon	\$17.41
Pennsylvania	\$15.54
Rhode Island	\$15.66
South Carolina	\$11.99
South Dakota	\$16.47
Tennessee	\$13.89
Texas	\$13.88
Utah	\$15.58
Vermont	\$15.66
Virginia	\$14.16
Washington	\$17.41
West Virginia	\$13.89
Wisconsin	\$15.37
Wyoming	\$14.68

For the most part, these AEW wages are typically above the state minimum wages. However, in some cases, minimum wage is actually higher than AEW. If this is the case, the employer would be required to pay the state minimum wage rate.

For example, in 2017, Arizona's AEW was \$10.95/hour but Arizona's state minimum wage was \$11.00/hour. So, H-2A employers were not allowed to pay the workers the AEW, but

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