Federal Court Invalidates New H-2A Wage Methodology - But Leaves Agricultural Employers Facing Potential Backpay Liability

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law
Roger McEowen's Blog: https://agriculturallaw.lawprofessorsblogs.com/
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Overview

A recent federal court decision has created significant uncertainty for agricultural employers who rely on the H-2A program. In *United Farm Workers v. United States Department of Labor*,[1] the federal district court for the Eastern District of California held that the Department of Labor's (DOL) new methodology for calculating the H-2A Adverse Effect Wage Rate (AEWR) violated the Administrative Procedure Act (APA).

The court found that several major components of DOL's methodology were arbitrary and capricious and that DOL improperly bypassed the normal notice-and-comment process when adopting substantive changes to the wage system. But there is an important twist: the court did not immediately vacate the rule. Instead, the existing methodology remains temporarily operative while DOL develops a replacement.

For agricultural employers, the decision creates both short-term stability and significant potential future wage exposure.

Background: The H-2A Wage Requirement

The H-2A program permits agricultural employers to employ temporary foreign agricultural workers when DOL determines that doing so will not adversely affect the wages and working conditions of similarly employed U.S. workers.[2] Generally, an H-2A employer must pay the highest applicable wage among the AEWR, a prevailing wage, an agreed-upon collective bargaining wage, or the applicable federal or state minimum wage.[3] In practice, the AEWR ordinarily establishes the wage floor for H-2A workers. For years, DOL calculated the AEWR using agricultural wage information derived from the USDA Farm Labor Survey (FLS). But USDA discontinued the FLS in August 2025. DOL responded with an Interim Final Rule (IFR), effective October 2, 2025, that substantially changed the methodology.

The new methodology made four significant changes. First, DOL substituted its Occupational Employment and Wage Statistics (OEWS) data for the FLS. Unlike the FLS, however, OEWS does not survey farm establishments. Second, DOL created a two-tier wage system. Approximately 92 percent of H-2A positions were expected to fall within Skill Level I, with wages calculated at the 17th percentile. The remaining positions would generally fall within Skill Level II, calculated at the 50th percentile. Third, DOL adopted a housing adjustment that reduced the

[1] No. 1:25-cv-01614-KES-EGC, 2026 U.S. Dist. LEXIS 192697 (E.D. Cal. Aug. 25, 2026).
[2] 8 U.S.C. § 1188(a)(1).
[3] 20 C.F.R. § 655.120(a).

AEWR based upon the value of employer-provided housing. Fourth, DOL adopted a "greater than 50 percent" rule for workers performing duties falling within multiple occupational classifications.

New Methodology Found Unlawful

The court held that the IFR was unlawful under the APA and remanded the matter to DOL to develop a new methodology. The court specifically concluded that the two-tier system, housing adjustment, OEWS methodology, and greater-than-50% occupational classification rule were arbitrary and capricious. The court did not say, however, that the DOL is prohibited from changing the AEWR methodology. Rather, DOL failed to adequately explain why its methodology would satisfy the statutory requirement that H-2A employment not adversely affect U.S. workers.

The decision also reflects the Supreme Court's recent recalibration of administrative law. Under *Loper Bright Enterprises v. Raimondo*,[4] courts no longer defer to an agency's reasonable interpretation of an ambiguous statute simply because the agency administers the statute. Courts must independently determine the meaning of the law and ensure that agencies remain within the authority Congress has delegated. The H-2A decision fits comfortably within that framework by being consistent with the post-*Loper Bright* administrative law environment. DOL was free to develop a replacement methodology, but it was not free to assume that its preferred methodology was lawful merely because the agency possessed technical expertise. The agency had to demonstrate that its choices were consistent with Congress's statutory command and were the product of reasoned decisionmaking.

In addition, the recent U.S. Supreme Court decision in *SEC v. Jarkesy*,[5] is relevant at a broader structural level. Although *Jarkesy* involved the Seventh Amendment and SEC administrative adjudication rather than H-2A wage regulation, the decision reflects the Supreme Court's increasing insistence that administrative agencies remain subject to constitutional boundaries and traditional judicial safeguards. *Loper Bright* limits judicial deference to agency interpretations of law; *Jarkesy* limits agency adjudicatory power where constitutional judicial protections apply. Together, the decisions are part of a broader constitutional trend toward judicial scrutiny of administrative power.

> **Observation:** Administrative agencies are governmental actors subject to constitutional and statutory limits. They are not substitute legislatures or courts.

The 17th-percentile wage. The court was particularly skeptical of DOL's decision to place approximately 92% of H-2A positions in Skill Level I and establish that tier at the 17th percentile. The court emphasized that DOL's reliance on the H-1B program did not adequately justify the approach. H-1B uses four wage tiers, whereas DOL created only two tiers for H-2A workers. Thus, using the lowest H-1B percentile as justification for the overwhelming majority of H-2A positions did not provide a sufficient explanation.

> **Observation:** For agricultural employers, this issue matters because the AEWR functions as the practical wage floor for many H-2A positions. A change in that floor can materially affect the cost

[4] 603 U.S. 369 (2024).
[5] 603 U.S. 109 (2024),

of harvesting crops, caring for livestock, and performing other labor-intensive agricultural operations.

Employer-Provided Housing

The court also rejected DOL's housing adjustment. H-2A employers generally must provide housing at no cost to H-2A workers and qualifying U.S. workers in corresponding employment.[6] Yet DOL's methodology reduced the AEWR based upon the value of that housing. The court reasoned that the approach effectively shifted the cost of housing from the employer to the worker through a lower wage. The court also noted that DOL's methodology assumed a 40-hour workweek in calculating the housing adjustment but applied the adjustment to every hour worked. Thus, an employee working 60 hours could effectively bear a housing adjustment greater than the actual weekly value of the housing.

> **Observation:** This is particularly important for farming operations because agricultural workweeks frequently exceed 40 hours during planting, harvesting, and other labor-intensive periods.

Problems With the OEWS Data

The court did not conclude that OEWS data can never be used to establish agricultural wages. Instead, the problem was DOL's failure to adequately account for the limitations of that data. The FLS specifically collected agricultural wage information. OEWS does not survey farm establishments in the same manner. The court also pointed out that farm labor contractors represent only part of the agricultural workforce and that contractor-employed workers generally earn less than workers employed directly by farm establishments. Consequently, using contractor wage information as a basis for setting the wage floor for agricultural workers could systematically understate actual agricultural wages.

> **Observation:** The broader administrative-law lesson is important. An agency does not have to select the perfect methodology. But it must consider reasonable alternatives and provide a reasoned explanation for rejecting them.

The “Greater Than 50 Percent” Rule

The occupational-classification rule presented another problem. Under the IFR, when an H-2A worker performed duties falling within multiple occupational classifications, the entire position was assigned to the classification encompassing more than 50 percent of the worker's duties. The court concluded that DOL had not adequately considered more precise alternatives, such as applying different wage rates to different portions of the worker's duties.

> **Observation:** This could be significant for diversified farming operations where an employee may perform several different functions during the same workweek.

[6] 20 C.F.R. § 655.122(d)(1).

Emergency Doesn't Bypass Notice and Comment

The court's APA analysis drew an important distinction. DOL had good cause to respond quickly to USDA's discontinuation of the FLS. Because the wage survey no longer existed, DOL needed an immediate replacement methodology. But the court concluded that this emergency did not justify using the IFR process to adopt additional substantive changes to the H-2A wage system. The two-tier system, housing adjustment, and occupational-classification rule should have gone through notice and comment. The decision therefore provides an important reminder that an agency's legitimate need to act quickly does not necessarily authorize it to make unrelated substantive policy changes without public participation.

> **Observation:** This is a key point. An agency may have to act quickly. But the need to act quickly doesn't mean the agency gets to use the emergency as a vehicle for implementing an entirely new policy regime. Congress, not an executive agency, is the institution that makes federal law. The agency administers the statute that Congress creates. It doesn't get to rewrite the statute because circumstances have changed.

Rule not Immediately Vacated

Perhaps the most consequential part of the decision is what the court did not do. Although the court declared the challenged methodology unlawful, it did not immediately vacate the IFR. The court concluded that immediate vacatur could leave the H-2A program without an applicable AEWR methodology and cause substantial disruption to agricultural labor markets. Consequently, the existing AEWR methodology remains temporarily operative while DOL develops a replacement. That means agricultural employers should not assume that the decision automatically restores the prior AEWR system or prior wage rates.

Potential Backpay Liability

The most significant practical concern for H-2A employers is potential future backpay. The court directed DOL to notify employers that they may be required to make backpay adjustments if the new AEWRs ultimately exceed the wages paid under the challenged methodology. The potential obligation applies not only to H-2A workers but also to U.S. workers in corresponding employment. Thus, an employer that pays the currently applicable AEWR may still face additional wage liability later if DOL's replacement methodology produces higher rates.

Practical Implications for Farmers and Ranchers

The decision warrants immediate attention from agricultural employers using H-2A labor:

- Preserve records. Employers should maintain detailed records of wages paid, hours worked, job duties, housing provided, and the occupational classifications applicable to each position.
- Do not assume today's AEWR is the final answer. The current rates remain temporarily applicable, but DOL must develop a new methodology.
- Evaluate corresponding-employment exposure. Potential backpay is not limited to foreign H-2A workers. U.S. workers in corresponding employment may also be affected.

- Review labor budgets. Producers should recognize that future AEWR increases could materially increase labor costs, particularly for labor-intensive operations.
- Monitor DOL's rulemaking. The replacement methodology will likely be subject to a more conventional administrative process, providing agricultural employers and their advisors an opportunity to evaluate and comment on the proposed approach.

Conclusion

United Farm Workers v. United States Department of Labor is an important decision for the agricultural industry. The court rejected DOL's attempt to substantially restructure the H-2A wage system through an interim final rule, while recognizing the agency's legitimate need to replace the discontinued FLS. For now, the challenged AEWR methodology remains operative pending further action by the DOL and the court. But the transition is far from over. DOL must develop a new methodology, and employers could ultimately face retroactive wage adjustments.

For farmers and ranchers relying on H-2A workers, the prudent approach is to treat current wage rates as temporary and preserve the records necessary to defend against (and calculate) any future wage claims.

From a broader standpoint, the significance of the H-2A decision isn't simply that DOL got its wage methodology wrong. It is that the court refused to treat administrative expertise as a substitute for congressional authorization, statutory interpretation, reasoned decisionmaking, and compliance with the APA. The court's decision also is about who gets to determine the economic rules governing agriculture. The AEWR can directly affect crop production costs; livestock labor costs; harvesting economics; labor-intensive specialty crops; housing costs; farm profitability; the availability of domestic and H-2A labor; and ultimately the price and competitiveness of American agricultural products.

The bottom line is that the court undermined several assumptions that have historically supported an expansive administrative state. And that's a very good thing constitutionally by reinforcing separation of powers, limiting administrative agency discretion, preserving Congress's legislative role, and requiring agencies to justify their policy choices through lawful procedures.