

# Global Immigration alert

March 2026

## United States

### DOL proposes rule to change computation of prevailing wages

#### Executive summary

On 27 March 2026, the US Department of Labor (DOL) published a Notice of Proposed Rulemaking (NPRM) proposing revisions to the computation of prevailing wage levels used for prevailing wage requests (PWRs) for the PERM Labor Certification Program and the Labor Condition Applications (LCAs) for the H-1B, H-1B1, and E-3 non-immigrant visa programs. Under the proposal, DOL seeks to increase the prevailing wage floors for Wage Level I from the 17th percentile to the 34th percentile, for Wage Level II from the 34th to the 52nd, for Wage Level III from the 50th to the 70th, and for Wage Level IV from the 67th to the 88th, relying upon wage data provided by the OEWS survey.

If finalized as proposed, these changes will increase the required prevailing wages for positions sponsored under EB2 and EB3 employment-based immigrant visa categories and H-1B, H-1B1, and E-3 non-immigrant programs. Under the proposed rule, employers will still be permitted to rely on employer provided wage surveys that meet DOL's acceptance criteria. The public comment period closes 26 May 2026.

#### Background and analysis

Under current regulations, DOL applies a unified four-tier prevailing wage framework based on the Occupational Employment and Wage Statistics (OEWS) survey administered by the Department's Bureau of Labor Statistics (BLS) to PWRs and LCAs. Based on current computation of the prevailing wage levels, the prevailing wage floors for Wage Level I through IV, respectively, is set at approximately

the 17th percentile, the 34th percentile, the 50th percentile, and the 67th percentile.

Under the proposed rule, the prevailing wage floors for Wage Level I through IV, respectively, will increase to the 34th percentile, the 52nd percentile, the 70th percentile, and the 88th percentile. DOL has indicated that where a Wage Level IV cannot be computed under their new methodology, the Wage Level IV will be determined using the current hourly wage rate applicable to the highest OEWS wage interval for the specific occupation and geographic area, or the arithmetic mean of the wages of all workers for the most specific occupation and geographic area, whichever is highest. DOL indicates that the proposed changes are intended to better reflect actual labor market conditions and modernize the wage levels.

Employers will continue to be permitted to rely on employer provided private wage survey data under the proposed rule, and DOL will monitor the use of private wage surveys to prevent abuse and ensure compliance. The proposed rule notes the department's discretion to reject employer provided surveys if they do not meet the methodological standards or fails to meet regulatory requirements.

Should the proposed rule become effective, the new computation of prevailing wage levels will apply to:

- PWRs pending with DOL as of the proposed effective date
- PWRs submitted on or after the proposed effective date
- LCAs filed with DOL on or after the proposed effective date

The new regulations will not retroactively apply to previously issued prevailing wage determinations, PERM Labor Certification applications, or LCAs.

### What this means

If finalized, the proposed rule will increase prevailing wage requirements for PERM labor certifications and Labor Condition Applications (LCAs). The impact of the increase may differ depending on industry, occupation code applicable to the position, and geographic location.

Employers sponsoring foreign nationals should anticipate:

- Increased wage costs associated with new H-1B, H-1B1, or E3 filings and extensions
- Increased prevailing wages to meet for PERM Labor Certification Applications
- Close monitoring by DOL on employers leveraging employer provided surveys
- Potential challenges for retaining or seeking entry-level or junior-level foreign talent
- Potential challenges to proceed with PERM-based sponsorship.

Private wage surveys will remain an option for employers to consider when assessing the required prevailing wage for an LCA or a PWR. Employers seeking to leverage private wage surveys must ensure that the survey(s) meet the DOL's regulatory criteria and be prepared for DOL's close monitoring of the use of survey(s).

Employers must also ensure that its job descriptions for affected roles provide accurate information regarding the nature and responsibilities of the job and minimum requirements of the role to ensure compliance with accurate wage level calculation for PWRs or LCAs.

The NPRM is open for public comment until 26 May 2026. Stakeholders may submit comments electronically via Regulations.gov under Docket No. ETA-2026-0001. DOL will review submitted comments before determining whether to issue a final rule and what implementation timeline may apply.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

EY | Building a better working world

**EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.**

**Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.**

**EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.**

**All in to shape the future with confidence.**

Follow us on X @EYCanada

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

#### About EY Law LLP

EY Law LLP is a Canadian law firm, affiliated with Ernst & Young LLP in Canada. Both EY Law LLP and Ernst & Young LLP are Ontario limited liability partnerships. EY Law LLP has no association or relationship with Ernst & Young LLP in the US, or any of its members. EY member firms do not practice law where not permitted by local law or regulation. Ernst & Young LLP (US) does not practice law or offer legal advice. For more information, please visit [EYLaw.ca](https://EYLaw.ca).

#### About Mehlman Jacobs LLP

Mehlman Jacobs LLP specializes in immigration law and provides legal and strategic advice to employers and their employees on all stages in the immigration process. Providing boutique, customized experience, the firm aims to provide transparency to an often complex and uncertain environment. Mehlman Jacobs, a California Limited Liability Partnership, limited to the practice of immigration law, is a member of Ernst & Young Global Limited and is independently owned and operated by US licensed lawyers.

© 2026 Ernst & Young LLP.

All Rights Reserved.

A member firm of Ernst & Young Global Limited.

EYG no. 002212-26Gbl

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact us or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on

#### EY Law LLP

Batia Stein, Partner  
+1 416 943 3593  
[batia.j.stein@ca.ey.com](mailto:batia.j.stein@ca.ey.com)

Marwah Serag, Partner  
+1 416 943 2944  
[marwah.serag@ca.ey.com](mailto:marwah.serag@ca.ey.com)

Melanie Bradshaw, Partner  
+1 416 943 5411  
[melanie.bradshaw@ca.ey.com](mailto:melanie.bradshaw@ca.ey.com)

Mehlman Jacobs LLP  
Sharon Mehlman, Partner  
+1 858 404 9350  
[sharon.mehlman@mehlmanjacobs.com](mailto:sharon.mehlman@mehlmanjacobs.com)

Dilnaz A. Saleem, Partner  
+1 713 750 1068  
[dilnaz.saleem@mehlmanjacobs.com](mailto:dilnaz.saleem@mehlmanjacobs.com)

Author: Hannah Lynn, Senior  
+1 416 941 3392  
[hannah.lynn@ca.ey.com](mailto:hannah.lynn@ca.ey.com)

Roxanne Israel, Partner  
+1 403 206 5086  
[roxanne.n.israel@ca.ey.com](mailto:roxanne.n.israel@ca.ey.com)

Sheila Snyder, Partner  
+1 604 899 3515  
[sheila.snyder@ca.ey.com](mailto:sheila.snyder@ca.ey.com)

Stephanie Lipstein, Partner  
+1 514 879 2725  
[stephanie.lipstein@ca.ey.com](mailto:stephanie.lipstein@ca.ey.com)