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H-1B: Biden administration to impose long delay on wage-boost rule for foreign workers

Minimum-pay plan is a carry-over from the Trump administration

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A controversial boost to minimum required wages for foreign workers on the H-1B visa will be delayed until 2023, according to a new proposed rule from the administration of President Joe Biden.

The lengthy delay comes on the heels of a Biden administration move just a week ago to impose a shorter delay in implementing a new wage scheme for the visa. That proposal set July 1 as the date for new, higher wage levels to start phasing in. The latest plan, not yet finalized by the U.S. Department of Labor, would see phase-in begin Jan. 1, 2023.

“President Biden claims that he is pro-worker,” said Ron Hira, a Howard University professor who studies the H-1B. “This action is plainly anti-worker.”

The H-1B, intended for jobs requiring specialized skills, is widely used as a path to a green card. Silicon Valley’s technology giants rely heavily on the visa and push to expand the 85,000 annual cap on new H-1Bs.

If the delay of the rule is finalized, the current wage requirements, which have been unchanged for a quarter century, will remain in place until 2023. Workers on the H-1B at the lowest pay level currently must receive the 17th percentile of the prevailing wage for their job type and location, while workers at the highest of the four levels must receive the 67th percentile.

“Fixing the absurdly low prevailing wage rates is the most needed reform,” Hira said. “The current wage scheme invites employers to pay far below market wages, undercutting U.S. workers and cheating foreign workers out of fair pay. The delay is inexplicable and inexcusable.”

The Labor Department estimates that delaying the wage increase until 2023 would cost workers, and save employers, $416 million in wages this year and $2.4 billion next year. Because the phase-in of higher wage requirements is also delayed, and the visas are valid three years, the wage cost for workers and savings for employers over 10 years is estimated by the agency to be about $30 billion.

The wage-boost rule is a carry-over from the administration of former President Donald Trump, which had proposed new pay levels but after losing a court battle to organizations including the Bay Area Council, whittled down the planned increases to the levels the Biden administration's proposed rule for 2023 has adopted. Workers on the H-1B at the lowest wage level would have to receive at least the 35th percentile of the prevailing wage for their job type and location, and workers at the highest wage level would have to receive the 90th percentile.

The National Foundation for American Policy, which supports expanding the H-1B program beyond the 85,000 cap, argued in a new report that the wage rule "still retains the goal of pricing out of the U.S. labor market employment-based immigrants and H-1B visa holders."

Foreign workers requiring H-1B extensions "could find an employer no longer able to retain them in the U.S." because of higher wage requirements, the group said.

The H-1B became a target for the Trump administration, which dramatically increased denials of the visa among staffing and outsourcing companies. The tech industry contends that the visa allows them to secure the world's top talent, and many H-1B workers receive higher-than-required salaries. However, critics point to abuses and maintain that companies, including the major tech firms, use the H-1B to supplant U.S. workers, drive down wages and facilitate outsourcing.

The National Foundation for American Policy, in opposing the wage rule, said, "Numerous studies and private wage surveys show high-skilled foreign nationals are paid the same or higher than comparable U.S. professionals."

Hira, along with Rutgers University public policy professor Hal Salzman and Daniel Costa, a director at the left-leaning Economic Policy Institute, in jointly submitted comments about the proposed rule to the Labor Department, asserted that those private wage surveys — which allow companies to set H-1B pay based on purchased survey data rather than U.S. Bureau of Labor Statistics wage estimates — can be unreliable and provide a loophole for employers.

"This option for H-1B wages means that employers contract with private firms to craft their own surveys to determine what their H-1B workers should be paid," the three wrote to the Labor Department. "Employers make an investment in a private wage survey only in order to pay their workers less."

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