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Compliance Connection

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Federal Compliance Update

DOL Proposes Increasing Wage Minimums for H-1B and PERM Programs

The U.S. Department of Labor (DOL) has announced a proposed [rule](#) that could significantly impact employers utilizing H-1B visas and the PERM labor certification process. The proposal focuses on increasing prevailing wage requirements, an important shift that may affect hiring strategies, workforce planning, and overall labor costs.

What's Changing?

At the core of the proposal is an adjustment to how prevailing wages are calculated. The DOL is seeking to raise wage minimums across all skill levels to better reflect current labor market conditions and ensure that foreign workers are not undercutting U.S. wages.

While specific wage level adjustments will vary by occupation and geographic area, the overall intent is clear:

- **Higher baseline wages** for H-1B workers
- **Stricter wage thresholds** for PERM labor certifications
- **Recalibration of wage levels (Level I-IV)** to more accurately align with experience and job complexity

To put the Immigration and Nationality Act's (INA) four-level wage system into place, the Department created guidance in 2005 for setting wages in non-agricultural immigration programs: Level I (entry) at the 17th percentile, Level II (qualified) at the 34th percentile, Level III (experienced) at the 50th percentile, and Level IV (fully competent) at the 67th percentile.

This four-level system follows the law, which requires wage surveys to include at least four wage levels based on a worker's experience, education, and level of supervision. It also helps make sure wages are set fairly by clearly showing differences between workers with different skills and experience.

The proposed changes include changes to the percentiles for the four levels in the wage system:

- Level I – 34th percentile
- Level II – 52nd percentile
- Level III – 70th percentile
- Level IV – 88th percentile

The proposed rule allows employers to continue using alternative wage sources instead of Occupational Employment and Wage Statistics (OEWS) data. However, the rule primarily focuses on increasing OEWS-based wage percentiles and does not clearly introduce new monitoring requirements specific to alternative wage sources.

Why This Matters for Employers

If implemented, these changes could have a substantial impact on employers who rely on foreign talent:

- **Increased Labor Costs:** Employers may need to budget for higher salaries to meet new compliance requirements.
- **Hiring Strategy Adjustments:** Entry-level H-1B roles may become less financially viable, pushing employers to prioritize more experienced candidates.

- PERM Process Challenges: Higher wage requirements could make it more difficult to demonstrate that hiring a foreign worker will not adversely affect U.S. workers.
- Compliance Risks: Employers will need to ensure wage determinations are accurate and updated to avoid penalties.

Broader Implications

The proposed rule reflects a broader policy trend toward protecting domestic wages while maintaining access to global talent. Critics argue that significant wage increases could limit employers' ability to fill critical skill gaps particularly in industries like healthcare, technology, and engineering.

For organizations already facing talent shortages, this could intensify competition for qualified workers and increase reliance on alternative workforce solutions.

What Employers Should Do Now

Although the rule is still in the proposal stage, employers should begin preparing:

- Review current H-1B and PERM cases for potential wage impact
- Assess budget forecasts for future sponsorships
- Evaluate workforce planning strategies to account for higher wage thresholds
- Monitor updates as the rule moves through the regulatory process

Looking Ahead

The DOL is currently accepting comments on the proposed rule, and changes may occur before final implementation. Employers should stay informed and work closely with immigration counsel to navigate potential changes effectively.

Washington Enacts Noncompete Ban – 2027

On March 23, 2026, Washington enacted a [law](#) banning virtually all noncompete agreements for employees and independent contractors. The new law takes effect on June 30, 2027.

Overview of Noncompete Ban

The new law makes all noncompete agreements void and unenforceable as of June 30, 2027, regardless of when the agreements were entered into. Previously, Washington permitted reasonable noncompete agreements for certain highly compensated employees.

"Noncompetition covenant" is defined as a written or oral covenant, agreement or contract that prohibits or restrains an individual from engaging in a lawful profession, trade or business; restrains a performer from engaging in a lawful performance; prevents the acceptance or transaction of business with a customer; or requires individuals to repay, forfeit or lose any right, benefit or compensation for engaging in a lawful profession, trade or business.

Exceptions

The new law permits the following:

- Nonsolicitation agreements that expire within 18 months of an employee's termination of employment and meet other statutory requirements;
- Confidentiality and trade secret agreements;
- Covenants entered into by a person purchasing or selling the goodwill of a business or otherwise acquiring or disposing of an ownership interest if the person signing the covenant purchases, sells, acquires or disposes of an ownership interest representing one percent or more of the business;
- Covenants entered into by a franchisee when the franchise sale complies with state law; and
- Agreements to repay out-of-pocket educational expenses if the agreement expires within 18 months of the employee's start date, prorates the repayment and does not require repayment if the employee's separation from employment is based on good cause.

Notice Requirements

By Oct. 1, 2027, employers must make reasonable efforts to provide written notice to current and former employees and independent contractors with whom the employer has an active noncompete agreement that such agreement is void and unenforceable.

Penalties

The attorney general and individuals aggrieved by a violation of the law may file a cause of action. Employers found in violation of the law may be liable for the greater of actual damages or \$5,000, plus reasonable attorney fees and costs.

Employer Takeaways

Employers may consider reviewing existing employee agreements or template agreements to determine whether any contain noncompete provisions that would be invalidated under the new law. Employers may also begin preparing revisions to such agreements and consider whether to use alternative provisions (e.g., nondisclosure provisions) to protect competitive business information. Finally, employers may begin reviewing existing noncompete agreements and drafting a template notice to be sent to such individuals with whom the employer has entered into a noncompete agreement.

EEO-1 Reporting of Self-identified Nonbinary Employees

As workplace demographics evolve, employers are increasingly navigating how to accurately and respectfully report employee data, especially when it comes to gender identity. One common area of confusion is how to handle self-identified nonbinary employees on the EEO-1 Component 1 report.

Current EEO-1 Reporting Framework

The Equal Employment Opportunity Commission (EEOC) currently requires employers to report employee data using a binary gender classification system:

- **Male**
- **Female**

At this time, there is no designated category for nonbinary employees within the EEO-1 reporting structure.

How to Report Nonbinary Employees

When an employee self-identifies as nonbinary, employers should follow EEOC guidance:

- Employers may use employment records or observer identification if an employee does not identify within the available categories.
- In practice, this means employers must report the employee as either **male or female** for EEO-1 purposes.

Importantly, employers should not force employees to self-identify within the binary. Instead, reporting decisions should be made using existing HR records or consistent internal processes.

Best Practices for Employers

While federal reporting requirements remain limited, employers can still take inclusive and compliant approaches:

- Maintain internal records that reflect employees' self-identified gender, including nonbinary identities
- Communicate transparently with employees about why reporting categories are limited
- Ensure consistency in how gender is assigned for EEO-1 reporting when self-identification does not align with available categories
- Train HR teams on respectful handling of gender identity data

Compliance Considerations

Employers should be mindful that:

- EEO-1 reporting requirements are separate from workplace nondiscrimination obligations
- Federal, state, and local laws may still protect gender identity, even if reporting categories lag behind
- Mishandling employee data can create both compliance and employee relations risks

Looking Ahead

There has been ongoing discussion about modernizing EEO-1 data collection to better reflect gender diversity, but no formal changes have been implemented to date. Employers should continue to monitor EEOC updates for any future revisions.

Midyear Compliance: Key Disclosure Deadlines for Group Health Plans

As the calendar year progresses, employers that sponsor group health plans should take steps to stay ahead of key mid-year compliance obligations. Federal reporting and disclosure requirements under laws such as the Employee Retirement Income Security Act (ERISA), the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the No Surprises Act must be addressed during the spring and summer months to avoid potential penalties and ensure participants receive required information. **This is not an all-inclusive list.**

REQUIREMENT	DESCRIPTION	DEADLINE
Summary Plan Description (SPD)(Newly enrolled participants)	ERISA-covered group health plans must provide April 1, 2026an SPD to new participants within 90 days of when an employee first becomes covered under the plan. For calendar-year plans, this means that employees who first enrolled effective Jan. 1 must receive their SPDs by April 1. (Note that the SPD must include certain required federal notices if applicable, such as the Newborns' and Mothers' Health Protection Act notice and the Notice of Patient Protections.)	April 1, 2026
COBRA General Notice (Newly enrolled participants)	Group health plans subject to COBRA must provide a General Notice of COBRA rights to each covered employee (and to each covered spouse, if applicable) within90 days of coverage beginning (April 1 for calendar-year plans).	April 1, 2026
Prescription Drug Data Collection (RxDC)Reporting	Group health plans and issuers must annually submit prescription drug and healthcare spending data to the Centers for Medicare and Medicaid Services. This reporting process is referred to as the RxDC report. Most employers will rely on third parties, such as issuers, third-party administrators or pharmacy benefit managers, to prepare and submit the RxDC report for their health plans.	June 1, 2026
Form 5500 Annual Return/Report	Most ERISA-covered retirement plans, including 401(k) and pension plans, must file Form 5500 annually with the Department of Labor (DOL). The filing includes information on plan operations, participants, financial condition and investments.	July 31 (calendar-year plans)
Small Plan Filing (Form 5500-SF)	Plans with fewer than 100 participants may qualify to file the simplified Form 5500-SF, provided they meet certain eligibility requirements. These plans are generally exempt from the independent audit requirement.	July 31
Large Plan Filing + Audit Requirement	Plans with 100 or more participants must file the full Form 5500 and include audited financial statements prepared by an independent qualified public accountant (IQPA). Participant counts include all eligible employees, not just those enrolled.	July 31
Form 5500-EZ (One-Participant Plans)	Solo 401(k) plans and other one-participant plans are not subject to ERISA Title I but must file Form 5500-EZ with the IRS once plan assets exceed \$250,000.	July 31
Extension Filing (Form 5558)	Employers may request a one-time extension of 2.5 months by filing IRS Form 5558 on or before the original due date. This extends the deadline to October 15 for calendar-year plans.	July 31 (extension request due)
Delinquent Filings (DFVCP)	Employers that miss the filing deadline may use the DOL's Delinquent Filer Voluntary Compliance Program (DFVCP) to correct late filings and significantly reduce penalties.	As soon as possible after missed deadline

PCORI Fees (Self-insured plans only, including HRAs)	Employers with self-insured health plans must pay a fee to fund the Patient Centered Outcomes Research Institute (PCORI). Self-insured health plans that are subject to PCORI fees include self-funded medical plans, as well as health reimbursement arrangements (HRAs) that are offered in conjunction with fully insured group medical plans. HRAs that are offered with self-insured group medical plans are not subject to separate PCORI fees if both the HRA and the self-insured medical plan have the same plan sponsor and the same plan year. Employers must file IRS Form 720 to report and pay PCORI fees each year, no later than July 31 of the year following the last day of the plan year.	July 31, 2026
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State Compliance Update

Colorado Creates AI Obligations for Employers - Reminder

Beginning June 30, 2026, the Colorado Artificial Intelligence Act (CAIA) will require employers to take certain steps to protect applicants and employees in the state from algorithmic discrimination, that is, discrimination by artificial intelligence (AI) systems they use to make employment-related decisions. Below are the highlights.

The CAIA will apply to employers of all sizes that do business in Colorado and use AI systems that make, or help make, significant employment-related decisions. An example would be an employer that uses an AI applicant tracking software that automatically screens out applicants prior to human review.

As the law is currently written, covered employers will have significant duties, including, but not limited to:

- Implementing an AI risk management policy and program
- Conducting annual AI impact assessments and reassessing within 90 days of certain
- modifications to the AI system
- Evaluating the AI system at least annually to ensure it isn't causing discrimination
- Notifying applicants and employees about the AI system, including about any
- adverse decision it made that affects them
- Posting specific notices (public disclosures) about the AI system on their website
- Notifying applicants and employees who interact with the AI system that they are
- interacting with AI

The law contains certain exceptions, most notably one for employers with 49 or fewer full-time equivalent employees that don't use their own data to train or improve their AI system (if you don't know whether you do this, we recommend checking with the provider of your AI system). These employers don't have to implement a risk management program, conduct impact assessments, or post public disclosures.

However, they're still obligated to exercise reasonable care to protect against risks of algorithmic discrimination. The governor has urged lawmakers to further improve and fine-tune the law before its effective date, so these requirements may change. We'll continue to track any changes to the law that affect employers and will post another alert if there are significant updates.

[SB 24-205](#) was signed by the governor on May 17, 2024.

[SB 25B-004](#) was signed by governor on August 28, 2025.

Compliance Calendar

April

4/30 – Removal of OSHA Form 300At

May

Nothing for May

June

Nothing for June so far...

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