

COVID-19 UPDATE



DEPARTMENT OF LABOR ANNOUNCES FINAL RULE REFORMING AEWR CALCULATION

Yesterday, the U.S. Departments of Agriculture (USDA) and Labor (DOL) announced a final rule updating the methodology for calculating the wage rate in the H-2A program. For nearly all H-2A jobs including harvest workers, the Adverse Effect Wage Rate (AEWR) will be frozen at the 2020 level for 2021 and 2022.

Beginning in 2023, DOL will adjust these AEWRs by the percentage change in the Bureau of Labor Statistics' Employment Cost Index (ECI) for wages and salaries for the preceding 12-month period. This should provide some relief for the apple industry as average increases to the ECI from 2015 to 2019 averaged 2.54% compared to the Labor Survey which increased by 4.48%. Going forward all states will increase by the same percentage year over year but state and regional variations in wage rates will remain based on the 2020 rates.

This announcement was expected as USDA recently announced it would discontinue the Farm Labor Survey. The rule is scheduled to go into effect at the end of the year though it could be challenged in court or rescinded by a future Administration.

The DOL intends to issue a second final rule to finalize the remainder of the July 29, 2019 proposed rule that will govern other aspects of the certification of agricultural labor or services performed by H-2A workers, and enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. If you have any questions regarding this rule, please do not hesitate to contact the Commission office.

RESOURCE FOR EMPLOYER GUIDANCE ON AB 685

AB 685 (Chapter 84, Statutes of 2020) is a new California law that requires employers to notify employees who may have been exposed to COVID-19 and to report workplace outbreaks of COVID-19 to the local health department.

In its requirements for employers, AB 685 refers to terms "as defined by the California Department of Public Health (CDPH)." CDPH definitions for these terms are below. CDPH also uses these terms in other contexts; the definitions here are intended for employer use in relation to AB 685.

COVID-19 outbreak:

- A COVID-19 outbreak in a non-healthcare workplace is defined as at least three COVID-19 cases among workers at the same worksite within a 14-day period.
- Under AB 685, a COVID-19 case is someone who:
 - Has a positive viral test for COVID-19,
 - Is diagnosed with COVID-19 by a licensed health care provider,
 - Is ordered to isolate for COVID-19 by a public health official, OR
 - Dies due to COVID-19, as determined by a public health department.
- Under AB 685 Section 4 (Labor Code Section 6409.6, subsection (a)(4(b))), if an employer or their representative is notified of the number of cases meeting the definition of a COVID-19 outbreak, they must notify the local public health agency in the jurisdiction where the worksite is located.
- Non-healthcare employers must therefore report to the local public health agency when three or more workers with COVID-19 are identified within a 14-day period.
- Health facilities, who are exempt from AB 685's mandate to report outbreaks to local health departments, should follow [CDPH reporting guidance for healthcare facilities](#).

Infectious period:

- For an individual who develops symptoms, the infectious period for COVID-19 begins 2 days before they first develop symptoms. The infectious period ends when the following criteria are met: 10 days have passed since symptoms first appeared, AND at least 24 hours have passed with no fever (without use of fever-reducing medications), AND other symptoms have improved.
- For an individual who tests positive but never develops symptoms, the infectious period for COVID-19 begins 2 days before the specimen for their first positive COVID-19 test was collected. The infectious period ends 10 days after the specimen for their first positive COVID-19 test was collected.
- Under AB 685 Section 4 (Labor Code Section 6409.6, subsection 1), employers must provide notice to all employees who were present at the same worksite as someone with COVID-19 during their infectious period.

Laboratory-confirmed case of COVID-19:

- A laboratory-confirmed case of COVID-19 is defined as a positive result on any viral test for COVID-19.

Please see CDPH's Employer Questions about AB 685 [web page](#) for additional information about AB 685 requirements.

Additionally, on behalf of the California Fresh Fruit Association, please click [HERE](#) to view an additional resource outlining steps for implementing policy to comply with AB 685. Please do not hesitate to reach out with any questions.