

Federal Court in California Blocks as Unlawful New DHS/DOL Rules That Would Severely Restrict H-1B Visas

Insights for Employers Alert | 1 min read

Dec 4, 2020

Earlier this week, The U.S. District Court for the Northern District of California blocked two regulations issued by the Department of Homeland Security (DHS) and the Department of Labor (DOL) that would have drastically limited availability of the H-1B visa program.

U.S. employers commonly use H-1B employment authorizations to temporarily employ foreign nationals in “specialty occupations.” These are occupations that require specialized education—typically a bachelor’s degree or its equivalent—or higher. The DHS rule made a number of changes to the H-1B program, including greatly narrowing the types of positions that would qualify as an H-1B specialty occupation. Additionally, the DOL rule changed the manner in which they calculated the “prevailing wage” rate required to be paid by employers to individuals sponsored for H-1B status, which would have drastically raised such wages. The court deemed these rules unlawful.

Both the DHS and DOL rules were enacted without the normal notice and comment rulemaking required under the Administrative Procedures Act. In overturning both sets of regulations, the court acknowledged that the COVID-19 pandemic was indeed a public health emergency, but that this fact was not sufficient justification to bypass the typical notice and comment rulemaking process. The court noted that the good cause exception to notice and comment rulemaking should be narrowly construed and that neither DHS or DOL were able to show the necessary level of dire consequences that would result from going through the usual notice and comment rulemaking.

[Read the full district court order](#) (PDF)

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