

THE
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Florida Court Again Strikes Down DOL H-2B Regulations

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The **Department of Labor** lacks authority under the **Immigration and Nationality Act** to issue regulations in the **H-2B** program, a **Florida** federal district court has ruled, vacating the DOL's 2008 H-2B regulations establishing standards and procedures for certifying employers' requests to import H-2B workers and calculating the prevailing wage rates for temporary foreign workers. **Perez v. Perez**, No. 3:14-cv-682 (N.D. Fla. Mar. 4, 2015).

DOL therefore announced that, effective immediately, it will no longer accept or process requests for prevailing wage determinations or applications for labor certification in the H-2B program while it considers its options in light of the court's decision.

This decision follows an earlier one issued by the same court in *Bayou Lawn & Landscape Servs. v. Perez*, No. 3:12cv183/MCR/CJK (N.D. Fla. Dec. 18, 2014), vacating the DOL's proposed 2012 H-2B regulations. DOL has appealed this case. These decisions are in direct conflict with the 11th Circuit's decision upholding DOL's authority to promulgate H-2B regulations in *La. Forestry Ass'n v. Sec'y United States DOL*, 2014 U.S. App. LEXIS 2167 (3d Cir. Feb. 5, 2014). If the 11th Circuit upholds the Florida district court's decision, then we may have an intercircuit conflict that may come before the U.S. Supreme Court.

Employers who rely upon the H-2B program for craft workers and temporary/seasonal employees (e.g., landscapers, housekeeping, ski instructors, commercial painters, welders, pipefitters, and machinists) should contact their Jackson Lewis attorney for further guidance. The DOL likely will take four to six weeks to respond to *Perez* and employers' obligations to pay certain wages and to ensure the consistent application of employment policies may be impacted in the short-term.

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The logo for Jackson Lewis, featuring the words "jackson lewis." in a bold, lowercase, sans-serif font. The "j" and "l" are significantly larger than the other letters.

Article By [Kevin Lashus](#)
[Otieno B. Ombok](#) Jackson Lewis P.C.
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