

## Direction of H-2B Program Unclear; PLANET Continues to Fight



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We have two new developments on the H-2B program to report. First, those landscape contractors who are currently using the H-2B program and who have already filed their applications for this season should be able to proceed as normal. However, the future of the program is still unclear.

Last week, Congress passed a bill to fund the federal government through Sept. 30, 2013, the end of fiscal year 2013. The bill also extends the current legal language on the H-2B wage rule and extends the prohibition on the Department of Labor implementing the rule until the end of the fiscal year. The bill now is awaiting President Obama's signature. Therefore, the DOL is delaying the effective date of the new wage rule for the remainder of FY 2013. The [attached notice](#) has been sent to the Federal Register for posting and publication.

Since this wage rule has been blocked, the DOL has been using the old wage determinations from 2008. On March 21, 2013, federal judge Legrome D. Davis issued a permanent injunction sought by an anti-H-2B group against the use of that 2008 rule by the DOL.

As a result of the ruling, the DOL has determined that most of its wage determinations in the H-2B program are based on the invalidated four-tiered OES wage, and is currently unable to issue a prevailing wage determination under the 2008 rule. However, if an employer's request for a prevailing wage determination is covered by a collective bargaining agreement, the DOL still may issue that prevailing wage determination because the issuance of such determinations is unaffected by the court's order. The DOL still may issue prevailing wage determinations based on the employer's submission of a private wage survey (if approved by the DOL), or its voluntary use of wages set under Davis-Bacon.

The DOL intends to propose a revised wage rule within 30 days of the court ruling that complies with the court's interpretation of what the statutory and regulatory framework require. Until we see this, we will not know its impact.

PLANET will continue to fight against implementation of both the H-2B wage rule and the H-2B program rule. However, the future of H-2B processing and wage determinations will be up in the air for some time.

If you have any questions, contact [Tom Delaney](#), PLANET director of government affairs, at 800-395-2522.