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Wage hike rule of Trump admin under review, will not apply to upcoming H-1B filing season

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MUMBAI: The final wage rule, issued by the Trump administration on January 14, will not apply to the upcoming H-1B filing season. The registration for H-1B is likely to begin in March.

This rule was to take effect from March 15, but will now be delayed to May 14, in response to President Joe Biden's regulatory freeze. "This proposed delay of 60 days will allow agency officials the opportunity to review any questions of fact, law, or policy, the rule may raise," says the US department of labour (DOL). Meanwhile, DOL will be seeking public comments on this extension.

Rajiv S Khanna, managing attorney at Immigration.com told TOI, "The May 14, timeline should take us past the H-1B lottery, if the Labour Condition Application (LCA) process is done before the kick-off date." The registration for H-1B applications (petitions) for the coming season is expected to commence in March. The lottery will be held in April.

This spells good news for technology companies who have plans to hire at lower skill levels, and also for research and medical institutions. Typically, international students transitioning to H-1B visas after completing their optional practical training (which is

three years for STEM students) are also hired at entry levels. Higher wages would have made it difficult for companies to hire them.

As reported by TOI earlier, the final rule, which increased wages across all four skill levels, had provided a multi-year transition period. The wage hike was not as steep as that contained in the earlier interim final rule introduced last October, which was shot down by US district courts as the public notice and comment requirements were not followed.

To illustrate, under the final rule, the entry-level wages for H-1B and green card holders was to increase to the 35th percentile of wages for the occupation and geographic location, from the 17th percentile. This was just above the current wage minimum for skill level 2. Under the interim final rules, the hike was more significant, with the entry-level wages slotted at the 45th percentile, just under what was the minimum salary for skill level 3.

"The net effect of this 'simple' percentile movement was that the salaries would eventually be increased approximately by 30 per cent, varying across job classifications," added Khanna.

While comparatively the wage hike was much lower, it still had the effect of making hiring of expat workers more challenging and was perceived as having an adverse effect in bridging the skill gaps, especially in crucial sectors such as technology and medical and research fields.

Now, this final wage rule is under review by the Biden administration. While wage hikes cannot be ruled out, the final picture on the level of wage hikes, if any, will emerge only after DOL finishes its review process and the Biden administration takes a final call.