

STAKEHOLDER REPORT

# 2023 Agricultural Peak Employment Wage and Practices Employer Survey Results

MAY 2025

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**Employment Security Department**  
WASHINGTON STATE

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## 2023 AGRICULTURAL PEAK EMPLOYMENT WAGE AND PRACTICES EMPLOYER SURVEY

The U.S. Department of Labor (USDOL) provides funding to State Workforce Agencies such as the Washington State Employment Security Department to conduct employer surveys. The surveys help USDOL regional offices establish prevailing wages and prevailing or normal and common practices in agriculture. On Nov. 14, 2022, the USDOL Employment and Training Administration (ETA) Office of Foreign Labor Certification (OFLC) published [new rules for conducting the surveys and determining H-2A prevailing wages](#).

Note: All results, estimations and potential prevailing wage findings contained within this report are preliminary and subject to change based on final determination by the USDOL in accordance with 20 CFR § 655.120(c).

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# Executive Summary

## Background

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The Washington State Employment Security Department (Employment Security) has conducted an agricultural wage and practice survey annually since 2015, surveying for occupations and activities for which employers have requested temporary foreign laborers through the Agricultural Recruitment System.

## Key findings

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The 2023 Agricultural Peak Employment Wage and Practice Employer Survey occurred December 2023 to May 2024. It received a 23.71% response rate; meaning 308 eligible employers responded to the survey. The survey identified:

- 154 distinct agricultural commodity-activity combinations, including crop and cherry color groupings.
- 71 commodity activities had enough responses to estimate the employer population.
- 28 commodity-activities had enough responses from within each employer size class to estimate the employment population.
- Four commodity-activities met the USDOL requirements for wage determinations: one apple activity, two cherry activities, and one pear activity.
- Pear harvesting increased from the 2022 wage finding process to \$30.06 per bin (+\$3.64).
- No berry activities met the USDOL requirements for wage determination.

No employment practice measures passed the prevailing practices or normal and common practices thresholds. Most employers indicated that all three employment practices (experience requirements, provision of family housing, and minimum productivity standards) were either not applicable or skipped the questions.

# 2023 Results

## Employer estimates

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To estimate the total number of employers that participated in the production of a given agricultural commodity activity and employed migrant or seasonal laborers, a log-linear approach to an abundance estimator known as a capture-recapture estimator was utilized.<sup>1</sup>

This type of population estimator has three general requirements:

1. At least two capture occasions are necessary to generate an estimate. An example of this would be having at least two agricultural survey iteration results available and in the same structural format.
2. The capture occasions occur over a relatively short period of time.
3. All occasions of the search procedure (e.g., survey iterations) remain conceptually equivalent.

Additionally, this type of estimator takes three universal assumptions:

1. The population in question is finite.
2. Immigration into the population area is negligible. For example, a small number of new agricultural employers established on a yearly basis.
3. Mortality rates are negligible, meaning the number of agricultural employers going out of business or ceasing participation in each commodity activity is small.

This approach to population estimation enables the determination of the probability of employers to respond to a survey iteration. Therefore, the expected number of employers in a given agricultural commodity activity can be formulated and re-expressed as a log-linear model. This model re-expression then allows the fitting of specific linear regressions that have the capacity to estimate the number of employers that did not respond to a survey iteration, accounting for survey nonresponse and producing a population estimate of the total number of employers participating in the production of a particular agricultural commodity-activity.

During the 2023 survey, 121 distinct agricultural crop-variety-activity combinations (excluding crop and cherry-color groupings) were reported; however, only 53 distinct crop-variety-

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<sup>1</sup> For more detailed information see: Rivest, L.P. & Baillargeon, S. (2007). "Rcapture: Loglinear Models for Capture-Recapture in R". *Journal of Statistical Software*, 19(5).

activities received high enough reporting frequencies over four survey iterations to warrant employer estimation.

Crop-variety-activity combinations were also grouped by crop activity (e.g., apple harvesting) to test for wage findings at the crop activity level. Cherry activities were additionally grouped into higher-level color groups of red, dark red and yellow (e.g. cherries-dark red-harvesting). Following stakeholder feedback and presence in ETA-790 job orders, cherries were also grouped into dark-sweet which represents red and dark red cherries. These groupings resulted in an additional 18 commodity-activities that had sufficient reporting frequencies to estimate employer population.

Figure 1 details the models chosen to generate the 71 employer population estimates, metrics to assess model fit and 95% confidence intervals for each commodity-activity. Employer estimates were generated using 2020, 2021, 2022 and 2023 employer survey iterations.

Figure 1: 2023 employer estimates by commodity and activity

Commodity	Activity	Estimation model	Employer estimate	Standard error	Confidence interval (95%)
Apples	Harvesting	Mth Darroch	730	98.55	580 - 978
Apples	Pruning	Mth Darroch	607	133.72	423 - 980
Apples	Thinning	Mth Darroch	651	170.57	419 - 1139
Berries	Harvesting	Mth Darroch	177	33.72	136 - 279
Berries	Pruning	Mth Darroch	91	15.11	76 - 141
Cherries	Harvesting	Mth Darroch	697	116.82	524 - 1000
Cherries	Pruning	Mth Darroch	412	104.87	277 - 723
Pears	Harvesting	Mth Darroch	475	106.25	328 - 773
Pears	Pruning	Mth Gamma3.5	278	105.47	170 - 667
Pears	Thinning	Mth Chao	140	29.81	100 - 227
Apples, Ambrosia	Harvesting	Mt	62	8.12	50 - 83
Apples, Ambrosia	Pruning	Mt	60	13.67	43 - 102
Apples, Ambrosia	Thinning	Mth Chao	38	6.68	30 - 58
Apples, Cosmic Crisp	Harvesting	Mth Chao	130	27.14	93 - 209
Apples, Cosmic Crisp	Pruning	Mt	95	22.06	66 - 161
Apples, Cosmic Crisp	Thinning	Mt	61	16.41	41 - 114
Apples, Cripps Pink	Harvesting	Mth Poisson2	101	34.47	62 - 219
Apples, Cripps Pink	Pruning	Mth Chao	46	15.47	30 - 105
Apples, Cripps Pink	Thinning	Mth Chao	46	11.48	33 - 84
Apples, Fuji	Harvesting	Mth Darroch	273	100.45	158 - 615
Apples, Fuji	Pruning	Mth Poisson2	147	50.84	87 - 314
Apples, Fuji	Thinning	Mth Poisson2	252	106.94	126 - 634

Commodity	Activity	Estimation model	Employer estimate	Standard error	Confidence interval (95%)
Apples, Gala	Harvesting	Mth Darroch	569	156.71	359 – 1027
Apples, Gala	Pruning	Mth Darroch	355	152.08	191 – 890
Apples, Gala	Thinning	Mth Poisson2	352	82.34	236 – 583
Apples, Golden Delicious	Harvesting	Mth Darroch	304	86.00	196 – 569
Apples, Golden Delicious	Pruning	Mth Darroch	241	120.21	120 – 709
Apples, Golden Delicious	Thinning	Mth Darroch	124	36.26	88 – 253
Apples, Granny Smith	Harvesting	Mth Darroch	155	35.34	117 – 271
Apples, Granny Smith	Pruning	Mth Chao	123	17.96	97 – 172
Apples, Granny Smith	Thinning	Mth Chao	80	12.30	62 – 118
Apples, Honeycrisp	Harvesting	Mth Gamma3.5	479	176.74	278 – 1083
Apples, Honeycrisp	Pruning	Mth Darroch	438	189.76	222 – 1097
Apples, Honeycrisp	Thinning	Mth Darroch	283	106.37	165 – 650
Apples, Red Delicious	Harvesting	Mth Darroch	144	30.54	110 – 242
Apples, Red Delicious	Pruning	Mth Poisson2	147	44.04	93 – 287
Apples, Red Delicious	Thinning	Mth Poisson2	126	37.78	81 – 248
Apples, Sugarbee	Pruning	Mth Chao	59	17.29	38 – 117
Apples, Sugarbee	Thinning	Mth Chao	43	11.82	30 – 83
Berries, Blueberries	Harvesting	Mth Darroch	113	31.83	80 – 224
Berries, Blueberries	Pruning	Mth Poisson2	64	8.06	54 – 88
Berries, Raspberries	Harvesting	Mth Poisson2	57	16.30	39 – 113
Berries, Raspberries	Pruning	Mth Chao	32	5.34	27 – 49
Cherries, Bing	Harvesting	Mth Darroch	386	90.07	265 – 645
Cherries, Bing	Pruning	Mth Darroch	193	59.66	127 – 395
Cherries, Chelan	Harvesting	Mth Darroch	84	33.79	59 – 226
Cherries, Chelan	Pruning	Mth Poisson2	64	25.71	39 – 162
Cherries, Lapin	Harvesting	Mth Poisson2	96	23.18	69 – 168
Cherries, Lapin	Pruning	Mth Poisson2	94	37.43	55 – 234
Cherries, Rainier	Harvesting	Mth Darroch	394	148.19	214 – 884
Cherries, Rainier	Pruning	Mth Poisson2	147	38.74	99 – 265
Cherries, Skeena	Harvesting	Mth Poisson2	82	21.13	57 – 150
Cherries, Skeena	Pruning	Mth Poisson2	61	23.11	38 – 148
Cherries, Sweetheart	Harvesting	Mth Darroch	171	68.00	99 – 421
Cherries, Sweetheart	Pruning	Mth Poisson2	92	31.71	59 – 199
Cherries, Tieton	Harvesting	Mth Chao	40	13.85	25 – 92
Pears, Bartlett	Harvesting	Mth Poisson2	318	47.02	247 – 439
Pears, Bartlett	Pruning	Mth Darroch	257	86.49	158 – 546
Pears, Bartlett	Thinning	Mth Poisson2	123	35.40	80 – 236
Pears, Bosc	Harvesting	Mth Poisson2	144	33.64	100 – 244

Commodity	Activity	Estimation model	Employer estimate	Standard error	Confidence interval (95%)
Pears, Bosc	Pruning	Mth Poisson2	95	29.59	61 – 194
Pears, D'Anjou	Harvesting	Mth Darroch	253	69.03	168 – 468
Pears, D'Anjou	Pruning	Mth Chao	125	12.33	106 – 159
Cherries, Darkred	Harvesting	Mth Darroch	517	104.78	370 – 805
Cherries, Darkred	Pruning	Mth Darroch	327	100.27	207 – 646
Cherries, Red	Harvesting	Mth Darroch	342	108.35	209 – 685
Cherries, Red	Pruning	Mth Poisson2	200	52.55	132 – 357
Cherries, Yellow	Harvesting	Mth Darroch	439	161.84	240 – 966
Cherries, Yellow	Pruning	Mth Chao	154	29.11	114 – 236
Cherries, Dark-Sweet	Harvesting	Mth Darroch	575	96.48	434 – 829
Cherries, Dark-Sweet	Pruning	Mth Darroch	341	87.99	232 – 609

Source: Employment Security Department/Labor Market Information and Research (LMIR) Division, 2020, 2021, 2022, 2023 Agricultural Wage and Practices Employer Surveys

## Employment estimates

Post-stratification based on employer size class was used for the 2023 survey iteration to estimate employment. Employer size classes (small, medium, and large) were partitioned for each commodity-activity using k-means<sup>2</sup> clustering of survey responses (2020-2023). Within each commodity-activity, employer survey responses were weighted by employer size class so that the sample totals from the survey equal population totals (employer estimates).

Reported employment of each employer within a given commodity-activity was multiplied by the post-stratification weight corresponding to its size class to generate estimated employment. The employer-level estimated employment was summed to estimate total employment within commodity-activity as shown in *Figure 2*. *Figure 2* shows the resulting total estimated employment levels by commodity-activity for which an estimate could be generated and fulfill USDOL determination requirements.<sup>3</sup>

<sup>2</sup> Hartigan, J. A., and M. A. Wong. "Algorithm AS 136: A K-Means Clustering Algorithm." *Journal of the Royal Statistical Society. Series C (Applied Statistics)*, vol. 28, no. 1, 1979, pp. 100–08.

<sup>3</sup> For employment estimates that did not meet USDOL requirements, see *Figure A3-1* in *Appendix 3*.



Figure 2: 2023 employment estimates by commodity and activity

Commodity	Activity	Total reported employment	Total estimated employment	Total reported employers	Total estimated employers
Apples	Harvesting	2,763	22,195	78	730
Apples	Thinning	1,475	18,001	28	651
Apples, Cripps Pink	Harvesting	1,214	5,492	7	101
Apples, Fuji	Pruning	1,046	6,367	6	147
Apples, Gala	Pruning	1,249	8,161	16	355
Apples, Gala	Thinning	1,258	9,419	15	352
Apples, Gala	Harvesting	1,585	11,248	30	569
Apples, Golden Delicious	Pruning	1,073	4,586	8	241
Apples, Golden Delicious	Thinning	1,136	5,210	11	124
Apples, Granny Smith	Harvesting	1,212	4,328	11	155
Apples, Granny Smith	Thinning	1,101	8,131	4	80
Apples, Pruning	Pruning	1,546	12,895	34	607
Apples, Red Delicious	Harvesting	1,650	5,097	19	144
Apples, Red Delicious	Pruning	1,247	4,915	9	147
Apples, Red Delicious	Thinning	1,147	4,261	7	126
Berries, Raspberries	Pruning	120	303	6	32
Cherries	Harvesting	2,397	20,419	64	697
Cherries, Bing	Pruning	214	1,739	12	193
Cherries, Darkred	Pruning	254	2,911	17	327
Cherries, Dark-Sweet	Pruning	267	2,937	20	341
Cherries, Dark-Sweet	Harvesting	2,296	17,256	57	575
Cherries, Pruning	Pruning	273	3,565	22	412
Cherries, Red	Harvesting	1,254	12,305	19	342
Cherries, Skeena	Harvesting	709	3,609	11	82
Pears	Harvesting	591	6,935	45	475
Pears	Pruning	172	2,122	21	278
Pears, Bartlett	Harvesting	358	4,330	29	318
Pears, Bartlett	Pruning	155	2,056	18	257

Source: Employment Security Department/Labor Market Information and Research (LMIR) Division, 2020, 2021, 2022, 2023 Agricultural Wage and Practices Employer Surveys

## Prevailing wage rates

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Figure 3 presents prevailing wages for commodity activities with population estimates and a determination from the results of the 2023 survey. Find more details on the prevailing wage finding process in *Appendix 1*.

Figure 3 contains two combination levels of commodity-activity wage structures, ranging from crop-level (e.g., cherries-harvesting) to one step lower (e.g., cherries-dark-sweet-harvesting) that all qualify for prevailing wage determinations.

For piece rate wages, the survey instrument collected hourly earnings guarantee, which is the minimum an employer must pay to an agricultural laborer, regardless of activity or amount of work, and the dimension of the base wage unit. For apple and pear base wage units, reported dimensions and base wages were normalized to the industry standard linear bin dimension (47" x 47" x 24.5") recorded and identified in 2022 employer job orders. When a reported linear bin dimension differed from the standard linear bin dimension, the cubic inches for the differing linear bin were calculated and the base wage reported was adjusted proportionally to meet the standard linear bin dimension. When bin dimensions were reported by weight, the most common bin weight from the 2023 survey was identified and equated to the standard linear bin dimension given the commodity in question. The most common bin weights reported were 900 pounds for apples. This allowed proportional adjustment to the base wage for bin dimensions reported by weight to meet the standard linear bin dimension. The result of normalizing base wages and wage unit dimensions increases the number of employers represented in the prevailing wage finding process, allowing for a more robust distribution of commodity activity wage structures.

Figure 3: 2023 Prevailing wage rates

Commodity	Activity	Prevailing wage	Wage unit	Hourly guarantee	Dimension	Bonus amount	Bonus unit
Apples, Gala	Harvesting	\$30.05	bin	N/A	47"x47"x24.5"	\$0.00	No bonus
Cherries	Harvesting	\$0.27	pound	N/A	N/A	\$0.00	No bonus
Cherries, Dark-Sweet	Harvesting	\$0.27	pound	N/A	N/A	\$0.00	No bonus
Pears	Harvesting	\$30.06	bin	N/A	47"x47"x24.5"	\$0.00	No bonus

Source: Employment Security Department/Labor Market Information and Research (LMIR) Division, 2023 Agricultural Wage and Practices Employer Survey

# Prevailing or normal and common employment practices

Federal law defines “Prevailing practice” ([20 CFR 655.103\(b\)](#)) for seasonal U.S. agricultural workers required by USDOL in job orders filed through the Agricultural Recruitment System.<sup>4</sup>

## Family housing

The provision of family housing was first analyzed by crop-variety-activity to identify notable distinction. As all specific crop-variety-activities received similar responses regarding the provision of family housing, they were grouped to crop varieties when arrayed for analysis. For those commodity-activity combinations which had sufficient reported employment to fulfill USDOL determination requirements (see *Figure 2*), no variation in the results were found. *Figure 4* illustrates the percentage of estimated employment and employers reported to inform a prevailing practice.

Figure 4: 2023 provision of family housing

Commodity	Activity	Housing	Housing amount (per week)	Percent estimated employment reported	Percent estimated employers reported
Apples	Harvesting	N/A	\$0.00	11.64%	10.11%
Apples	Harvesting	Yes	\$0.00	0.09%	0.41%
Apples	Harvesting	No	\$0.00	0.94%	2.60%
Apples	Pruning	N/A	\$0.00	11.95%	5.43%
Apples	Pruning	No	\$0.00	0.04%	0.16%
Apples	Thinning	N/A	\$0.00	8.13%	4.45%
Apples	Thinning	No	\$0.00	0.06%	0.31%
Cherries	Harvesting	N/A	\$0.00	11.01%	10.16%
Cherries	Harvesting	Yes	\$0.00	0.12%	0.14%
Cherries	Harvesting	No	\$0.00	0.61%	1.14%
Cherries	Pruning	N/A	\$0.00	7.32%	4.84%
Cherries	Pruning	No	\$0.00	0.34%	0.73%
Pears	Harvesting	N/A	\$0.00	6.63%	8.18%
Pears	Harvesting	Yes	\$0.00	0.22%	0.42%
Pears	Harvesting	No	\$0.00	1.67%	2.73%
Pears	Pruning	N/A	\$0.00	7.54%	7.17%

<sup>4</sup> For more information see *Appendix 2* of this report.

Commodity	Activity	Housing	Housing amount (per week)	Percent estimated employment reported	Percent estimated employers reported
Pears	Pruning	No	\$0.00	0.57%	0.36%

Source: Employment Security Department/Labor Market Information and Research (LMIR) Division, 2023 Agricultural Wage and Practices Employer Survey

## Normal and common practices

### Experience requirements

Experience requirements were first calculated by commodity-activity to determine if there were differences across specific crop-variety-activities. As all specific crop-variety-activity combinations indicated no experience requirements, they were grouped to crop varieties when arrayed for analysis. It was found there was no variation in experience requirements, and the majority of employers included in the analysis indicated no months required or skipped the question. *Figure 5* details the percent of estimated employment and employers reported to determine a finding by months of experience required to be employed.

Figure 5: 2023 experience requirements

Commodity	Activity	Experience (months)	Percent estimated employment reported	Percent estimated employers reported
Apples	Harvesting	24	5.31%	3.57%
Apples	Harvesting	N/A	5.76%	7.14%
Apples	Pruning	N/A	13.65%	8.00%
Apples	Thinning	N/A	3.61%	3.90%
Cherries	harvesting	24	5.15%	4.55%
Cherries	Harvesting	N/A	4.38%	4.55%
Cherries	Pruning	12	5.16%	5.00%
Pears	Harvesting	N/A	11.63%	11.11%
Pears	Pruning	N/A	7.87%	7.69%

Source: Employment Security Department/Labor Market Information and Research (LMIR) Division, 2023 Agricultural Wage and Practices Employer Survey

### Minimum productivity standards

For all commodity-activities, most employers either skipped the question or responded that a minimum productivity standard was not applicable. *Figure 6* shows the percentage of

estimated employment and employers reported by crop for reported minimum productivity standards.

Figure 6: 2023 crop-level minimum productivity standards

Commodity	Activity	Productivity standard	Productivity unit	Productivity frequency	Percent estimated employment reported	Percent estimated employers reported
Apples	Harvesting	N/A	N/A	N/A	5.16%	9.60%
Apples	Pruning	N/A	N/A	N/A	11.80%	5.25%
Apples	Thinning	N/A	N/A	N/A	8.07%	4.44%
Cherries	Harvesting	N/A	N/A	N/A	6.73%	8.33%
Cherries	Pruning	N/A	N/A	N/A	7.63%	5.33%
Pears	Harvesting	3	Bins	Per Day	0.58%	0.83%
Pears	Harvesting	4	Bins	Per Day	0.43%	0.83%
Pears	Harvesting	N/A	N/A	N/A	4.17%	6.00%
Pears	Pruning	N/A	N/A	N/A	7.63%	6.05%

Source: Employment Security Department/Labor Market Information and Research (LMIR) Division, 2023 Agricultural Wage and Practices Employer Survey

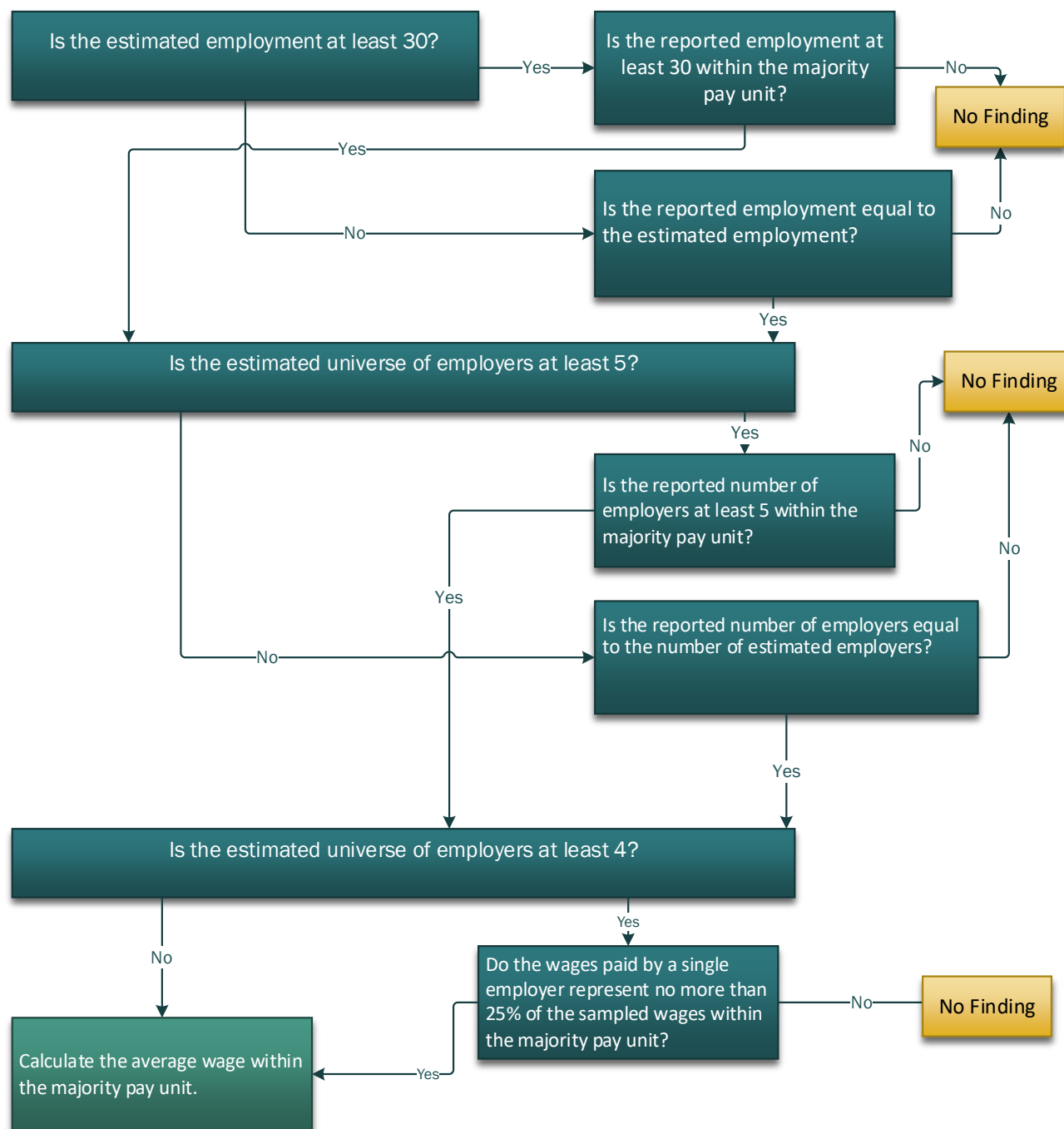
# Appendix 1: Prevailing wage rate finding process

On Nov, 14, 2022, the USDOL Employment and Training Administration (ETA) Office of Foreign Labor Certification (OFLC) published new rules for determining H-2A prevailing wages (20 CFR § 655.120(c)).

*Figure A1-1* illustrates the wage finding process. The wage data is first subset to the pay unit that is used to compensate the most estimated employment (majority pay unit). Then, a series of checks are employed on the subset data. The  $\geq 30$  estimated employment and  $\geq 5$  estimated employers rules replace the percentile threshold requirements from USDOL ETA Handbook No.385. The  $>25\%$  rule prevents a single employer from representing more than 25% of the wages sampled within the majority pay unit.

Finally, the prevailing wage rate is calculated as the average wage weighted by estimated employment. Using estimated employment for determining the majority pay unit and calculating the average wage utilizes our robust statical estimations as part of the wage finding process and is not precluded by guidance communicated by the USDOL National Prevailing Wage Center (NPWC) dated May 9, 2023.

Figure A1-1: Visual chart of U.S. Department of Labor updated prevailing wage determination process



Source: 20 CFR § 655.120(c) "Prevailing Wage Determinations", interpreted and presented graphically by Employment Security Department/Labor Market Information and Research (LMIR)

## Appendix 2: Estimating prevailing or normal and common practices

Per ETA Handbook 398, State Workforce Agencies (SWAs) are required to determine the conditions of employment for U.S. seasonal workers in each agricultural activity surveyed. This portion of the survey is to ensure employers who hire foreign workers, “conform the job offer to conditions and standards which are ‘prevailing,’ ‘normal,’ or ‘common’ practices or standards of other employers who hire U.S. workers in the same area and in the same occupation.” ETA Handbook 398, p. II-5.

The concept of a prevailing practice has a specific quantitative threshold. If at least 50% of all employers who also employ at least 50% of all U.S. workers in a given activity engage in a practice, then it is prevailing.<sup>5</sup> This is referred to as the double-majority rule. The following practices are subject to the prevailing threshold:

1. The provision of family housing
2. Transportation and subsistence costs
3. Frequency of payment

However, the quantitative threshold for normal and common standards is not specified in ETA Handbook 398. Instead, normal and common are defined as:

...situations which may be less than prevailing, but which clearly are not unusual or rare. The degree to which a practice is engaged in (or a benefit is provided) should be determined to be close to what is viewed (and measured) as “prevailing,” but the degree by which the practice or benefit is measured and degree of proof needed to establish its acceptability for H-2A purposes is not as formal or stringent as “prevailing” calls for.

ETA Handbook 398, p. II-7.

When setting the quantitative threshold for normal and common practices or benefits, USDOL’s Regional Administrators (RAs) use their discretion. The following practices are subject to the “normal and common” threshold:

1. Minimum productivity standards
2. Provision of tools and equipment

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<sup>5</sup> Regulatory definitions, see: 20 CFR 655.103(b) and 20 CFR 655.1300(c).



3. Occupational qualifications (e.g., experience requirements)
4. Positive recruitment of U.S. workers.

SWAs do not use the same sampling universe for every practice surveyed to make a prevailing or normal and common determination. Of the practices listed previously, SWAs are required to survey both H-2A and non-H-2A employers about the following:

1. Provision of tools and equipment
2. Provision of family housing
3. Frequency of payment

SWAs are required to survey only non-H-2A employers concerning the following practices:<sup>6</sup>

1. Transportation and subsistence costs
2. Positive recruitment of U.S. workers
3. Occupational qualifications

The employers to be surveyed and the threshold to be used are less clear for productivity standards. Additional guidance from USDOL led us to survey both H-2A and non-H-2A employers, and to apply the “normal and common” threshold, for productivity standards.

## Prevailing practices

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According to USDOL guidance, a practice or standard must apply to half of all employers who also hire half of all workers in our sample to be considered prevailing (the double-majority rule). The only practice or benefit included in the 2023 survey that is subject to the prevailing threshold is the provision of family housing. For our prevailing practice recommendations, we used the same sample size rules used to estimate prevailing wages.

### Family housing

Following guidance from USDOL, we surveyed for all family housing offered and the cost associated on a weekly basis. ETA Handbook 398 states:

In arriving at a determination as to whether the provision of family housing is a prevailing practice, RAs and SESAs must look beyond the threshold question on the basic availability of housing which is suitable for families. They must also determine whether it is the active practice of

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<sup>6</sup> For more information, see: 20 CFR 655.122, § 655.150-158, and § 655.1305.

employers to offer this housing as a benefit to migrant workers who need and request it.

ETA Handbook 398, p. II-8.

## Transportation and subsistence costs and frequency of payments

ESD has not included questions about transportation and subsistence costs since the 2020 survey.

20 CFR 655.1305(e)(5) states:

During the period of employment that is the subject of the labor certification application, the employer will... Provide transportation in compliance with all applicable Federal, State or local laws and regulations between the worker's living quarters (i.e., housing provided by the employer under 20 CFR 655.104(d)) and the employer's worksite without cost to the worker.

It is our understanding that 20 CFR 655.1305 requires employers to provide transportation. Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA) further states that if transportation is not provided, transportation expenses must be advanced or reimbursed upon the completion of 50% of the contract period. Therefore, we did not survey employers about transportation costs in the 2023 survey.

Similarly, employers are required to provide housing and subsistence for each day of the contract period in accordance with 20 CFR 655.1304(i)(5). 20 CFR 655.1304(g) contains additional details on the requirement of employers to provide three meals a day or free cooking facilities.

We also did not include questions related to the frequency of payment on 2023 survey. According to 20 CFR 655.1304(m):

The employer must state in the job offer the frequency with which the worker will be paid, which must be at least twice monthly.

Due to the language included in the regulation, referring to a minimum requirement of twice a month, we decided to not include questions, beginning on the 2019 survey, related to the frequency of payment.

## Normal and common practices

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There is no quantitative threshold for normal or common practices specified in ETA Handbook 398. As a result, we followed advice received in an email communication, dated January 5, 2016, with the USDOL Chicago National Processing Center (CNPC) to arrive at our normal and common practices recommendations for minimum productivity standards and experience requirements.

According to this guidance, at least 33 percent of employers in a sample must report engaging in a practice before the practice is considered “normal and common.” However, we received no instruction regarding the percentage of employers who must use a specific standard (e.g., four bins per day, or three months of experience) to determine maximum allowable standards in H-2A job orders. As a result, we decided that the next step should be to determine the most common quantifiable standard reported.

### Minimum productivity standards

For all commodity-activities with a sufficient sample size to report findings, we did not have any occurrences by commodity-activity where minimum productivity standards were normal and common, as the majority of the employers either skipped the question or answered no. Therefore, there are no accepted minimum productivity standards in Washington state.

#### Experience requirements

ETA Handbook 398 states that experience requirements (occupational qualifications) are subject to the normal and common threshold.

In determining the appropriateness of occupational qualification, the regional office should consider normal, accepted practice of non-H-2A employers in the same or comparable occupations and crops as a first step.

ETA Handbook 398, pp. II-13 – II-14.

### Reference checks

As of April 2021, there have been no requirements or guidelines that require a normal and common practice determination for employee references. We were notified that USDOL previously challenged employers on the reference requirement issue and lost the case before an administrative law judge. The decision indicated that, if experience requirements are deemed “normal and common,” the USDOL must allow employers to require a reference in their job orders when they choose to do so. Although we collected information on reference

checks for the 2015 survey iteration, given the administrative law judge decision that employers must be allowed to require references when they chose to, we did not include the question for the 2020 through 2023 surveys.

## **Provision of tools and the positive recruitment of U.S. workers**

We did not include questions about the provision of tools on the 2023 survey. ETA Handbook 398 states the following about the provision of tools:

Normally, employers must provide, without charge, all tools, supplies and equipment to the workers, if they are required to perform the tasks described in the job offer ... Absent a specific, justifiable, approved request from an employer, the RA must require that employers provide necessary tools, supplies and equipment without charge to the worker

ETA Handbook 398, p. II-9.

In addition, 20 CFR 655.122(f) states that, “The employer must provide to the worker, without charge or deposit charge, all tools, supplies and equipment required to perform the duties assigned.”

We also did not include questions on the 2023 survey related to the positive recruitment of U.S. workers. Since the majority of employers report bypassing the Agricultural Recruitment System for the recruitment of domestic workers, almost all job orders received in the state of Washington go through the H-2A system. The recruitment of U.S. workers is a requirement of the H-2A system. Therefore, we did not survey employers about the positive recruitment of U.S. workers.

## Appendix 3: Supplemental data

Figure A3-1: 2023 commodity-activities that failed USDOL requirement 20 CFR 655.120(c)(1)(ix)

Commodity-Activity	
Apples, Fuji, Pruning	Cherries, Dark Red, Pruning
Apples, Gala, Pruning	Cherries, Dark-Sweet, Pruning
Apples, Gala, Thinning	Cherries, Pruning
Apples, Golden Delicious, Pruning	Cherries, Red, Harvesting
Apples, Golden Delicious, Thinning	Cherries, Skeena, Harvesting
Apples, Harvesting	Pears, Bartlett, Harvesting
Apples, Pruning	Pears, Bartlett, Pruning
Apples, Red Delicious, Harvesting	Pears, Pruning
Apples, Red Delicious, Pruning	Apples, Cripps Pink, Harvesting
Apples, Red Delicious, Thinning	Apples, Granny Smith, Harvesting
Apples, Thinning, Thinning	Apples, Granny Smith, Thinning
Cherries, Bing, Pruning	Berries, Raspberries, Pruning

Source: Employment Security Department/LMIR, 2023 Agricultural Wage and Practice Employer Survey

# Appendix 4: H-2A job orders analysis

## Background

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The following describes the Washington Employment Security Department Labor Market Information and Research (LMIR) division's efforts to comply with the permanent injunction order (ECF No. 252, filed September 23, 2024) in the case of *Torres Hernandez v. U.S. Dep't of Labor*, No. 1:20-cv-03241-TOR. The Court ordered that:

ESD shall exclude from future prevailing wage survey results any reported wages that (1) exactly match the AEWR; (2) were paid by an employer that had received an AEWR-only job order for the 2023 harvest season; and (3) were paid during the 2023 harvest season for work in an agricultural activity with a piece-rate prevailing wage during that season.

## Methodology

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1. LMIR filtered the 2023 employer survey responses to those that matched the 2023 AEWR of \$17.97 per hour.
2. LMIR provided this list of employers to ESD Agricultural and Seasonal Workforce Services (ASWS) Foreign Labor Certification (FLC) Program Supervisor to check for certified ETA-790 forms ("job orders") submitted by these employers for the year 2023 as either the primary or "additional joint" employers.
3. LMIR filtered FLC provided list of job orders to those that were "AEWR only"
4. LMIR checked the list of employers against the original list of survey respondents from step 1.
5. LMIR filtered responses to those that had a standing piece rate prevailing wage in 2023.

## Results

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Only one employer that filed an "AEWR only" job order in 2023 submitted survey responses to the 2023 Agricultural Employment Wage and Practices Employer Survey for commodity activities that had a standing piece-rate prevailing wages in 2023. These

responses were removed from employment estimation and prevailing wage determination.