



# GMS Flash Alert

## Immigration Edition

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# United States - Legal Challenge Mounted Against New DOL and DHS Rules

A U.S. Department of Labor (DOL) regulation took effect on October 8, 2020, which significantly increased the wage minimums associated with the H-1B, H-1B1, E-3, and permanent labor certification programs. The Department of Homeland Security (DHS) also published a rule on October 8, 2020, that will make sweeping changes to the H-1B program, including narrowing the definition of “specialty occupation.” The new DHS rule is scheduled to take effect on December 7, 2020. (For related coverage, see GMS [Flash Alert 2020-424](#), 7 October 2020.)

Legal challenges to the DOL and DHS rules have recently been launched in federal courts by several different plaintiffs. The lawsuits are *Chamber of Commerce et al. v. DHS et al.*, Case No. 20-CV-7331 (N.D. Ca., October 19, 2020), *Purdue, et al. v. Scalia*, Case No. 1:20-CV-03006 (D.D.C., October 19, 2020) and *ITServe Alliance Inc., et al. v. Scalia*, Case No. 3:20-14604 (D.N.J., October 16, 2020).<sup>1</sup>

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## WHY THIS MATTERS

The plaintiffs in the aforementioned cases are seeking injunctions to temporarily halt the enforcement of the DOL and DHS rules while their legality is under dispute. There is no defined timeline within which the courts will rule on the requests for injunctive relief.

For now, the DOL wage rule remains in effect, meaning that employers may be required to pay significantly higher wages to employees sponsored for permanent labor certification, or classification in the H-1B, H-1B1, and E-3 categories. Also, the DHS rule could be implemented on December 7, 2020, if a temporary injunction is not granted by this date. This rule would restrict H-1B eligibility and invariably result in a higher percentage of H-1B petition denials.

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## Some Details on Arguments before the Courts

The plaintiffs argue that the DOL and DHS did not follow federal procedure when they published the regulations without adequate notice or an opportunity for the public to provide feedback. The lawsuits also assert that the rules are arbitrary and capricious. The plaintiffs further allege that the DOL wage regulation is based on incorrect and outdated data, as well as reasoning that conflicts with basic economic theory.

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### KPMG NOTE

KPMG Law LLP is carefully following the progress of the challenges against the DOL and DHS rules. We will endeavor to provide updates as they become available.

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### FOOTNOTE:

1 See *Chamber of Commerce et al. v. DHS et al.*, Case No. 20-CV-7331 (N.D. Ca., October 19, 2020), on the U.S. Chamber of Commerce website at: [https://www.uschamber.com/sites/default/files/2020-07-21\\_-\\_complaint\\_for\\_declaratory\\_injunctive\\_relief.pdf](https://www.uschamber.com/sites/default/files/2020-07-21_-_complaint_for_declaratory_injunctive_relief.pdf).

See *Purdue, et al. v. Scalia*, Case No. 1:20-CV-03006 (D.D.C., October 19, 2020) at: [https://www.pacermonitor.com/public/case/36755981/PURDUE\\_UNIVERSITY\\_et\\_al\\_v\\_SCALIA\\_et\\_al](https://www.pacermonitor.com/public/case/36755981/PURDUE_UNIVERSITY_et_al_v_SCALIA_et_al).

See *ITServe Alliance Inc., et al. v. Scalia*, Case No. 3:20-14604 (D.N.J., October 16, 2020) at: <https://www.courtlistener.com/docket/18547103/itserve-alliance-inc-v-scalia/>.

*Note that these are 3<sup>rd</sup> party (non-governmental, non-KPMG) websites. Providing these links does not represent an endorsement of these websites by KPMG.*

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## Contact us

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