

Labor & Employment Client Alert



June 2014

Federal Contractor Minimum Wage Hike Imminent

Last week, the Secretary of Labor announced a new proposed rule raising the minimum wage for workers on federal service and construction contracts to **\$10.10 an hour**. This implements Executive Order 13658 ("EO") that was announced in February and is another move in President Obama's commitment to increasing the minimum wage. According to the Department of Labor ("DOL") press release, "[t]he proposed rule provides guidance and sets standards for employers concerning coverage, including coverage of tipped employees and workers with disabilities. It also establishes an enforcement process familiar to most government contractors that will protect the right of workers to receive the new minimum wage. The proposed rule includes an economic analysis showing that nearly 200,000 workers will benefit from the increase."

What Contracts Are Covered?

The EO applies to new contracts and replacements for expiring contracts with the federal government that result from solicitations issued on or after January 1, 2015, and to contracts that are awarded outside the solicitation process on or after January 1, 2015. While "truly automatic" renewals of contracts or exercises of options without bilateral negotiations fall outside the scope of the EO, the minimum wage requirements do apply to any renewals or extensions of contracts resulting from bilateral negotiations if they are awarded on or after January 1, 2015.

The EO applies to four major categories of contractual agreements: (1) contracts for construction covered by the Davis-Bacon Act ("DBA"); (2) service contracts under the Service Contract Act ("SCA"); (3) concessions contracts; and (4) contracts entered into by the federal government in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. The EO and the proposed rule contain certain narrow exclusions from coverage for the following types of contractual agreements: (1) grants; (2) certain contracts and agreements with and grants to Indian Tribes; (3) any procurement contracts for construction that are not subject to the DBA (such as procurement contracts for construction under \$2,000); and (4) any contracts for services, except those expressly covered by the proposed rule, that are exempted from the SCA.

Who Is Entitled to the Executive Order Minimum Wage?

The EO minimum wage will apply to the following categories of workers for all time spent performing work on covered federal contracts: (1) employees who are entitled to the FLSA minimum wage; (2) service employees who are entitled to prevailing wages under the SCA; and (3) laborers and mechanics who are entitled to prevailing wages under the DBA. Of course, if a worker is entitled to a wage rate higher than the EO minimum wage pursuant to another federal or state law, the workers must be paid the higher wage rate.

What Obligations Do Contractors Have?

The proposed rule sets forth certain obligations that contractors and subcontractors must fulfill in order to comply with the EO, such as not paying less than the EO minimum wage for all hours spent performing work on covered contracts, including the EO minimum wage contract clause in lower-tiered subcontracts, and complying with obligations related to wage deductions, frequency of pay, and recordkeeping.

What Now?

You shouldn't think this is the end of updates to federal wage and hour law for federal contractors. Under the EO and the proposed rule, the DOL is **required** to determine the EO minimum wage rate yearly beginning January 1, 2016, and publish this wage rate at least 90 days before the wage is to take effect.

If you are affected by or interested in this proposed rule, the DOL encourages you to view the proposed rule and submit comments within 30 days following publication in the *Federal Register*. If you need guidance or assistance in doing so, or have questions about whether this rule will affect you, we recommend you contact employment counsel. The DOL will then review comments received and issue a final rule by October 1, 2014. The publication in the *Federal Register* has not yet occurred, but we'll let you know when it does.

Until then, stay tuned...

— [Jennifer L. Anderson](#) and [Mary Margaret LeBato](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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