

Minimum Wage Increased to \$15 Per Hour for Federal Contractors

Written by Christopher Feudo, Samuel R. Hoff

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On November 22, 2021, the U.S. Department of Labor issued a [Final Rule](#) that will increase the minimum wage for employees who work on federal contracts. The Final Rule implements [Executive Order 14026](#), which President Biden executed on April 27, 2021.

The Final Rule, which applies in all 50 states, the District of Columbia, and specified U.S. territories, does the following:

- Increases the hourly minimum wage for employees performing work on or in connection with covered federal contracts to \$15 per hour beginning on January 30, 2022.
- Continues to index the federal contract minimum wage in future years to inflation.
- Eliminates the tipped minimum wage for federal contract employees by 2024.
- Ensures a \$15 minimum wage for employees with disabilities performing work on or in connection with covered contracts.

Covered Contracts and Employers

The increased minimum wage must be paid to employees by their federal contractor employers, which the Final Rule defines as any individual or other legal entity that is awarded a Federal Government contract or subcontract. The term “contract” is also broadly defined so as to apply to virtually any procurement action, lease agreement, cooperative agreement, provider agreement, service agreement, license, permit or any other type of agreement (regardless of whether such contract was the result of a competitive bidding process or awarded to a single party under applicable authority).

The new requirements apply only to “new” contracts, which are contracts that contain a “Clause” mandating payment of the increased minimum wage. This means that a federal contractor that entered into a contract with the Federal Government prior to January 30, 2022, is not required to comply with the rule unless or until such contract is renewed or extended or an option is exercised on it after January 30, 2022 (at which time the Clause will be inserted). Certain contracts are exempted from the new requirements, including, but not limited to, contracts that require performance entirely outside of the United States; contracts for the manufacturing or furnishing of materials, supplies, or equipment; certain construction contracts; and contracts for certain professional services.

Payment of Increased Minimum Wage

Critically, federal contractors are only required to pay the increased minimum wage to employees who perform work “on or in connection with” a covered contract, as opposed to their entire workforce. An employee performs work “on” a covered contract if he or she directly performs the specific services called for by the contract. An employee performs work “in connection with” a covered contract if his or her work activities are necessary to the performance of a contract but are not the specific services called for by the contract. Accordingly, employees who provide ancillary services, e.g., human resources, billing, legal review, or IT, in support of employees who work “on” a covered contract would therefore be covered by the rule.

Federal contractors can compensate such covered employees on a daily, weekly, or other time basis (no less often than semi-monthly), or by piece or task rates, so long as the measure of work and compensation used, when computed to an hourly basis each workweek, would provide a rate per hour that is no lower than the required minimum wage. Employees cannot waive, nor may federal contractors induce their employees to waive, their right to the increased minimum wage. Federal contractors also are required to notify their employees of their rights with respect to the increased minimum wage.

Liability for Subcontractors

Federal contractors are required to “flow” the Clause down to their contracts with first-tier subcontractors, and first-tier subcontractors are required to do the same in their contracts with lower-tier subcontractors. Federal contractors must be aware that they are not only responsible for “flowing” the Clause down; they are also responsible for their first-tier subcontractors’ compliance with the requirements of the Final Rule (first-tier subcontractors are similarly responsible for lower-tier subcontractors). For example, to the extent that a first-tier subcontractor fails to pay its employees the increased minimum wage even though its contract included the Clause, the federal contractor may be held liable for any penalties owed to the employees.

Penalties for Noncompliance

Federal contractors that fail to pay their employees the increased minimum wage may be required to remedy such failure by paying back wages to employees in the required amount. The Department of Labor may bring a civil lawsuit against the federal contractor to recover such back wages plus any additional damages. Further, where a federal contractor is found to have disregarded its obligations under the rule, such federal contractor (as well as its responsible officers and any business entity in which the federal contractor or its responsible officers have an interest) may be prohibited from obtaining a new contract for three years.

Compliance with the new requirements is likely to raise questions for federal contractors, and it is likely that the Department of Labor will issue further guidance prior to January 30, 2022. We will continue to monitor developments and update clients on these issues. In the meantime, clients that contract with the Federal Government should take steps necessary to prepare to implement the increased minimum wage.

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