

DOL Issues Proposed Rule on \$15 Minimum Wage for Certain Employees of Federal Contractors and Subcontractors

Labor & Employment Law Update

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On July 23, 2021, the United States Department of Labor (DOL) announced a proposed rule to increase the minimum wage for employees of covered federal contractors and subcontractors to \$15.00 per hour. This rule follows President Biden's Executive Order calling for an increase to the minimum wage for

federal contractors. The rule suggests that the minimum wage increase go into effect January 30, 2022 and increase annually beginning in 2023 based on inflation.

The Proposed Rule is not final and may be revised. The DOL is accepting comments until August 21, 2021 and will publish its final rule on November 24, 2021. Regardless, federal contractors should begin to prepare for likely changes to the minimum wage for certain employees. To assist in this preparation, here are answers to key questions on this rule:

Who is covered by this increase in minimum wage?

In short, any workers on "new contracts" starting on January 30, 2022.

To be covered, the employee must work on (i.e., performing the specific services provided in the contract) or in connection with (i.e., performing other duties necessary to the performance of the contract) a contract or subcontract with the federal government. The proposed rule intends to cover a wide range of contracts with the Federal Government that fall within four main categories: (1) procurement contracts covered under the Davis-Bacon Act, (2) service contracts

covered by the Service Contract Act, (3) concessions contracts granting a right to use Federal land or other property for furnishing services, and (4) any other contracts in connection with Federal property or lands and related to offering services for Federal employees or the general public. "New contracts" includes not only those new contracts entered into on or after January 30, 2022, but also any pre-existing contracts that are renewed or extended after that date.

How much notice will employers receive for each subsequent increase to the minimum wage based on inflation?

The DOL will provide at least 90 days of notice before any increases to the minimum wage take effect.

Does the \$15.00 minimum wage extend to employees of federal contractors and subcontractors who earn some or most of their compensation through tips?

No. Under the proposed rule, tipped workers must be paid at least \$10.50 per hour.

Will there be increases to the new minimum wage set for tipped workers?

Any time the minimum wage for non-tipped workers increases, the minimum wage for tipped workers will also increase to 85% of the new rate until January 1, 2024. Then, on or after January 1, 2024, tipped workers will receive the same minimum wage as non-tipped employees.

Does the proposed rule provide for additional compensation for tipped workers if their earnings do not equate to the minimum wage set for non-tipped employees?

Yes. If the combination of wages and tips received by the tipped workers does not equal or exceed the standard minimum wage set for non-tipped employees, the contractor must provide additional wages to make up the difference.

Who will enforce this new minimum wage?

The DOL Wage and Hour Division will enforce the new minimum wage. The DOL will accept and investigate complaints of non-compliance with the minimum wage. The DOL may request an employer to remedy any violation. If the employer does not remedy the violation, the DOL could require the contracting agency to withhold payments due under the covered contract to the contractor and then transfer that money to the worker who was not paid the minimum wage.

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