

Federal Contractors' Alert: Minimum Wage for Workers Is Going Up January 30, 2022

Labor & Employment Law Update

By Heather Bailey on November 30, 2021



With the help of the US Department of Labor (DOL), the Biden Administration made good on its promise to increase the minimum wage for workers who work on new or updated federal contracts (including extended, renewed, or exercise of an option on an existing contract). The President's full Executive Order may be found on the White House website.

This was carried out by the DOL on November 22, 2021

with its Final Rule requiring that such workers' minimum pay will now be \$15.00 an hour starting January 30, 2022. Keep in mind if your local or state minimum wage is more, you have to pay the higher minimum wage so this new law will not affect those employees already earning more money. The Rule allows for an annual raise to keep in line with inflation as set by the Secretary of Labor. The new minimum wage is also going to flow down to sub-contracts as well.

Tipped employees earned progressive bumps along the way: \$10.50 an hour starting on January 30, 2022; 85% of the federal wage in effect as of January 1, 2023 (rounded to nearest \$0.05); and full federal minimum wage in effect as of January 1, 2024 and beyond.

Are All Federal Contracts Covered?

No. Much like the vaccination mandate for federal contractors, this new Rule generally applies to the following types of federal contracts (so long as the wages of these workers are governed by the Fair Labor Standards Act, the Service Contract Act and/or the Davis-Bacon Act):

- Contracts for services covered by the Service Contract Act;
- Procurement contracts for construction covered by the Davis-Bacon Act;
- Contracts for concessions; and
- Contracts entered into with 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 minimum wage increase does not apply to the following:

- Grants;
- Contracts or agreements with Indian Tribes;
- Procurement contracts for construction that are excluded from coverage of the Davis-Bacon Act;
- Contracts for services that are exempted from coverage under the Service Contract Act;
- Employees who are exempt from the minimum wage requirements of the Fair Labor Standards Act under 29 U.S.C. §§ 213(a) and 214(a)–(b) (additionally, learners, apprentices, messengers, certain students and white-collar exempted employees);
- FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek; and
- Contracts that result from a solicitation issued before January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022.

Keep in mind, the DOL encouraged all agencies to follow this same path and increase the minimum wage accordingly even if they do not fall into these categories. Thus, it is best to make sure that you review any new contracts or any updates to existing federal contracts made on or after January 30th to determine if the new regulation will apply to your workforce.

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