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DOL Issues Proposed Rule Increasing Minimum Wage to \$15/ Hour for Federal Contracts

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On July 21, 2021 the Department of Labor (“DOL”) published a [Proposed Rule](#) that will raise the minimum wage for federal contractors to \$15 per hour beginning January 30, 2022. It also calls for annual, indexed increases beginning January 1, 2023. The Proposed Rule implements [Executive Order \(“EO”\) 14026](#), which President Biden issued last April. EO 14026 builds on the foundation established by [EO 13658](#), which President Obama signed in 2014.

What You Need to Know

- Increase in minimum wage becomes effective January 2022 with annual indexed increases
- The Proposed Rule applies not only to newly awarded contracts and options under existing contracts but also to leases, cooperative agreements and other “contract-like instruments”
- The Proposed Rule applies to all tiers of subcontractors and suppliers in the Government channel.

The new minimum wage will apply to new contracts, “contract-like instruments” and to the extensions or the exercise of options under previously awarded contracts or contract-like instruments. The Proposed Rule will apply to “procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement . . . whether entered into verbally or in writing.” Significantly, it also applies to subcontractors at any tier, regardless of how many levels of subcontractors separate the prime contractor from the subcontractor and whether the subcontract includes the relevant contract clause.

The Proposed Rule also expands the definition of “workers” entitled to receive minimum wage to includes those “registered in a bona fide apprenticeship or training program,” and all those whose “work activities are necessary to the performance of a contract” even if the services that individual renders “are not the specific services called for by the contract.”

Additionally, the geographical scope is extended in this Proposed Rule to exceed the fifty (50) states and Washington, D.C., and include Puerto Rico, the Virgin Islands, Outer Continental Shelf lands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

The DOL Wage and Hour Division (“WHD”) will be vested with authority to enforce the requirements of the Proposed Rule. WHD will be authorized to receive complaints from any worker, contractor, labor or trade organization, contracting agency, or any “other person or entity that believes a violation . . . has occurred.” If a violation is found and the contractor does not remedy the violation, WHD may direct the federal government to withhold payment to the contractor and to make such payment directly to the DOL, which would then disburse those payments directly to workers. DOL retains the authorization to bring suit on behalf of underpaid contract workers if the sums withheld from the contract by WHD are insufficient to make those affected employees whole. Additionally, if the contractor is found to have “disregarded its obligations” to abide by the new minimum wage requirements, the contractor will become ineligible to be awarded any federal contract for a period of three (3) years.

GOVERNMENT CONTRACTS AND LABOR AND EMPLOYMENT

In light of the breadth of this Proposed Rule, existing contractors should review their contracts and other instruments associated with providing goods or services to the federal government to determine whether the increase in minimum wage may impact any options or extensions that may be exercised. Further, contractors should identify those job titles and workers who work “on or in connection with” a covered contract, potentially including such workers as administrative and support personnel, and to ensure they are paid at the new minimum wage by January 30, 2022.

The Proposed Rule remains open for public comment until August 23, 2021. Final regulations will be issued by November 24, 2021. Saul Ewing Arnstein & Lehr will continue to monitor these developments through the comment period. If you have any questions regarding an issue raised within this alert, or any others that affect your business, please contact the authors or the attorney at the Firm with whom you have regular contact.

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