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EMPLOYMENT LAW LETTER

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DOL proposed rule aims to boost fed contractor minimum wage to \$15/hour

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by Judith B. Kassel and Garrett P. Buttrey, Saul Ewing Arnstein & Lehr LLP**

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by Judith B. Kassel and Garrett P. Buttrey, Saul Ewing Arnstein & Lehr LLP

The U.S. Department of Labor (DOL) recently published a [proposed rule](#) to 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 Joe Biden issued last April. The order builds on the foundation established by [EO 13658](#), which President Barack Obama signed in 2014.

What's covered

The new \$15 minimum wage will apply to:

- New contracts, "contract-like instruments," and extensions or the exercise of options under previously awarded contracts or contract-like instruments;
- "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"; and
- 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 include those "registered in a bona fide apprenticeship or training program" or whose "work activities are necessary to the performance of a contract" even if the services the individual renders "are not the specific services called for by the contract."

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Additionally, the proposed rule extends its geographical scope to exceed the 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.

Enforcement protocols

The DOL's Wage and Hour Division (WHD) will be vested with the authority to enforce the proposed rule. It will be able 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 doesn't remedy the violation, the WHD may direct the federal government to withhold payments to the contractor and instead make them to the DOL, which would then disburse the funds directly to the workers. The DOL retains the authorization to file suit on behalf of the underpaid workers if the sums withheld from the contract by the WHD aren't sufficient to make the affected employees whole.

Additionally, if a contractor is found to have "disregarded its obligations" to abide by the new minimum wage requirements, it will become ineligible to receive any federal contract for a period of three years.

What federal contractors should do

First, in light of the proposed rule's breadth, existing contractors should review their contracts and other instruments associated with providing goods or services to the federal government to determine whether the minimum wage increase may affect any options or extensions that could be exercised.

Second, contractors should identify any job titles and workers who work "on or in connection with" a covered contract, potentially including administrative and support personnel, and ensure they're receiving the new minimum wage by January 30, 2022.

Comment period

The proposed rule was to remain open for public comments until August 23, 2021. Final regulations will be issued by November 24, 2021. We will continue to monitor the developments.

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