

DOL Proposed Rule Supplements President Biden's Executive Order Raising Federal Contractor Minimum Wage to \$15.00 Per Hour

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On April 27, 2021 President Biden signed an Executive Order raising the minimum wage for federal contractors to \$15 per hour by the end of March 2022 (see alert here). In response, and to supplement the Executive Order, the U.S. Department of Labor ("DOL") introduced a Proposed Rule on July 21, 2021, which would regulatorily codify the Executive Order's mandates and clarify the implementation and enforcement mechanisms for the new minimum wage requirement.

Like the Executive Order, the Proposed Rule calls for the \$15.00 minimum wage to be implemented on January 30, 2022, and for future minimum wage increases to index inflation beginning on January 1, 2023, and annually thereafter. The Proposed Rule clarifies that the \$15.00 minimum wage will apply both to new contractual engagements and in scenarios where the federal government exercises contract options to purchase additional services or supplies under an existing contract.

The Proposed Rule defines "contract" in the broadest possible terms, to include "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." Adding color to the Executive Order, the Proposed Rule makes explicitly clear that the new minimum wage applies both to impacted contracts "and any contracts of any tier thereunder," ensuring that any supplies provided or services rendered pursuant to a contract subsidiary to the principal contract will be subject to the increased minimum wage. The Proposed Rule goes beyond the Executive Order in its definition of "workers" entitled to the increased minimum wage-the scope of impacted workers includes workers "registered in a bona fide apprenticeship or training program" and all workers whose "work activities are necessary to the performance of a contract" even if the services that they render "are not the specific services called for by the contract."

In terms of enforcement, the Proposed Rule empowers the Wage and Hour Division 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." Where a violation of the minimum wage requirements is found, and the contractor fails to remedy the violation, the Wage and Hour Division is empowered to direct the federal government to withhold payments due on the contract and to make payments under the contract directly to the DOL for disbursement to workers. Further, when a contractor is found to have "disregarded its obligations," the Proposed Rule requires that the contractor be ineligible to be awarded any federal contract or subcontract for up to three years. Finally, following a final order issued by the DOL Secretary, the DOL is authorized to bring an action

on behalf of underpaid contractors' employees where the sums withheld are insufficient to make those employees whole.

The Proposed Rule was published [in the Federal Register](#) on July 22, 2021, and will be open for public comment until August 23, 2021. Following public comment, final regulations must be issued by November 24, 2021.

Missteps by Federal Contract Employers will be Costly

Given the sweeping nature of its requirements, the Proposed Rule leaves little ambiguity as to how broadly it will apply to workers employed by contractors and subcontractors rendering products and services to the federal government. Employers in these contractual engagements should be careful to ensure that all employees performing work "on or in connection with" a covered contract-not just those employees performing the specific work called for in the contract-are compensated at a rate that meets or exceeds the \$15.00 minimum wage by January 30, 2022, and the new minimum wage indexed to inflation each year thereafter. While not explicit in the Proposed Rule, this likely includes administrative and support personnel who supplement federally contracted-for work. Failing to do so may subject the employer to the determination that it has "disregarded its obligations," cutting the employer off from federal contracting opportunities for up to 3 years.

For more information, contact a member of Benesch's [Labor & Employment Practice Group](#).

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