

DOL Finalizes New Wage and Hour Rules for Federal Contractors and Beyond...

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On November 24, 2021, the United States Department of Labor will formally publish and implement new wage and hour rules for federal contractors (including their subcontractors), pursuant to an Executive Order issued by President Biden in April earlier this year. An unpublished form of the new rules, however, is currently available. Given the broad language used in this new rule, it is important to stress that both federal contractor employers and all their subcontractors working on or in connection with federal contracts should take note of several significant changes that will result from its finalization.

If this new rule survives legal challenges and remains in effect (as discussed briefly below), it will apply broadly to workers of federal contractors and any subcontractors working on or in connection with “new contracts” (i.e., a contract entered, renewed, or extended on or after January 30, 2022), subject to some limited and specific exclusions and exemptions.

Most notably, the new rule raises the minimum wage for federal contractor employees from \$10.95 per hour to \$15.00 per hour beginning January 30, 2022, with subsequent increases in the rate to occur in accordance with annual determinations by the Secretary of Labor based on percentage increases in the Consumer Price Index.

It remains to be seen whether and what types of legal challenges to the rule will follow its publication, and how those will be decided or resolved. The guidance accompanying the rule itself seems to acknowledge (even though it does not agree with) at least one potential challenge or significant issue: disruption of collective bargaining agreements that involved previously negotiated and agreed-upon wage rates below \$15.00 per hour. Guidance to the rule seems to suggest that such wage rates will not be permitted.

Nonetheless, for now, employers should take note that the increase in the minimum wage rate is not the only significant change. The new rule also:

1. Gradually lessens, and eventually eliminates, the ability of federal contractors to pay tipped employees a reduced hourly rate with a tip credit, meaning all federal contractor workers (tipped or not) must be paid at least \$15.00 per hour by January 1, 2024; and
2. Clarifies that federal contractors must still comply with higher wage rates where required by other federal, state, or local law or rules (e.g., prevailing wage rates); and
3. Contains a “flow-down requirement” that obligates federal contractors to require their subcontractors, through their subcontracts, to comply with the new rule with respect to their own workers.

There are many other features of the new rule. It will require federal contractors to post notice of the new minimum wage requirements. It also provides for procedures for employees to file complaints to the Wage and Hour Division of the Department of Labor and further contains anti-retaliation provisions. In addition, it provides for the following as possible remedies for violations: (1) payment of unpaid and/or lost wages; (2) reinstatement; and/or (3) promotion.

Failing to incorporate into contracts clauses with the new rule’s requirements may result in withholding of contract payments, contract termination, charges of costs associated with contract default, and debarment for a period of up to three (3) years.

If you are a federal contractor, it is important to stay tuned to developments with this rule—particularly legal challenges that may ensue. With that said, because it is becoming a final published rule tomorrow, it is a good idea to prepare for any changes to come.

Do not hesitate to reach out to a member of our Labor & Employment Team to make sure you understand how the new rule may impact your work force and to stay abreast of legal developments that may impact its implementation.