

Minimum Wage for Federal Contract Workers Will Increase to \$10.10 on January 1

October 16, 2014

The U.S. Department of Labor (DOL) has raised the minimum wage for federal service and construction contract workers to \$10.10, in a final rule that takes effect January 1, 2015. This final rule implements Executive Order 13658, which was issued in February.

The new wage will apply to new contracts and replacements for expiring contracts with the federal government that result from solicitations issued on or after January 1, 2015, and to contracts that are awarded outside the solicitation process on or after the same date. The term "contract" includes oral agreements and subcontracts of any tier. This minimum wage will be indexed to inflation in future years.

All employers should immediately audit their contracts to determine if it is providing services in connection with covered contracts to assess whether its workers are committing 20 percent or more of their work performing the support work covered by the new regulations.

Under the final rule, the Executive Order applies to all individuals and legal entities awarded a federal government contract or subcontract under a federal government contract, including

1. Construction contracts covered by the Davis-Bacon Act (DBA);
2. Contracts for services covered by the Service Contract Act (SCA);
3. Concessions contracts such as contracts to furnish food, lodging, automobile fuel, souvenirs, newspaper stands and recreational equipment; and contracts to provide services, such as child care or dry cleaning, on federal property for federal employees or the general public; and
4. Contracts to provide services on federal property or lands.

The final rule clarifies that the minimum wage requirement only applies to work done "on" covered contracts (i.e., workers directly performing work called for by the contract's terms) or "in connection with" covered contracts (i.e., workers performing other duties necessary to the performance of the contract). Grants, within the meaning of the Federal Grant and Cooperative Agreement Act, are expressly excluded from coverage.

In one of the more controversial aspects of the proposed rules, the DOL stated that workers who perform support services "in connection with a covered contract" who are covered by the Fair Labor Standards Act must also be paid the minimum wage, even though they are neither "service workers" covered by the SCA nor onsite "laborers and mechanics" covered by the DBA. As a compromise, the DOL has added subsection 10.4(f), which provides that workers performing support work "in connection with a covered contract" accounting for fewer than 20 percent of their hours in a work week are not entitled to the minimum wage.

The rule, which was published on the Federal Register Oct. 7, is available at <https://www.federalregister.gov/articles/2014/10/07/2014-23533/establishing-a-minimum-wage-for-contractors>.

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As always, we will keep you informed of any additional developments.