

CLIENT ALERT

DOL Issues Proposed Rule Implementing Minimum Wage Increase for Federal Contractors

August 2, 2021

On July 21, 2021, the Department of Labor (“DOL”) announced that it is seeking public comment on a proposed rule which would require federal contractors to pay a \$15.00 per hour minimum wage by January 30, 2022. The rule would implement President Biden’s April 27, 2021 Executive Order 14026 (“EO 14026”), which mandated an increase in the minimum wage of workers on federal government contracts (and associated subcontracts). Currently, the minimum wage for workers on federal contracts is \$10.95 per hour and the tipped minimum wage is \$7.65 per hour. EO 14026 builds on President Obama’s 2014 Executive Order 13658, which established a \$10.10 per hour federal contractor minimum wage that would increase annually. The final rule covering EO 14026 is scheduled to be issued by November 24, 2021, and the new minimum wage obligations are slated to go into effect on January 30, 2022.

The proposed rule provides some clarity on a key question left unanswered by the EO itself: the definition of a worker who performs work “in connection with the contract” and therefore is covered by the EO. The rule specifies that a “worker” performs “on” a contract if the worker directly performs the specific services called for by the contract. It further specifies that a worker performs “in connection with” a contract if “the worker’s work activities are necessary to the performance of a contract but are not the specific services called for by the contract.”

The proposed rule excludes workers who are entitled to the federal minimum wage prescribed by the Fair Labor Standards Act and who are performing in connection with a contract for less than 20 percent of their work hours in a given workweek. This means that, generally, a contractor’s employees who do not perform work on its federal contracts will not be covered by these minimum wage requirements. The proposed rule also excludes from its minimum wage requirements federal grants, contracts with Indian Tribes, procurement contracts excluded from the Davis-Bacon Act, service contracts excluded from the Service Contract Act, contracts that are not performed in the United States, and contracts for manufacturing or furnishing materials, supplies, articles, or equipment to the federal government.

It also includes some exemption for very low-value contracts, depending on the type of contract. The minimum wage requirements *will*, however, apply to subcontractors and their lower-tier subcontractors, with no exemption based on the size or value of the subcontract.

Comments must be submitted on or before **August 23, 2021**, but the DOL suggests submitting comments as soon as possible.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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