

CLIENT ALERT

President Issues Executive Order Raising Minimum Wage for Some Federal Contractor Employees – Questions Remain

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Following up on a promise he made during the State of the Union address, President Obama signed an Executive Order (EO) on February 12, 2014, increasing the minimum wage for some employees of some federal contractors and subcontractors to \$10.10/hour. What is clear from the EO is that the wage increase will apply only to contracts that are entered into after January 1, 2015, and that it applies to both covered prime contractors and subcontractors.

Other aspects of the EO, however, are unclear, including the scope of coverage. The expectation prior to the White House's release of the EO was that the increase would apply only to contracts that are subject to the Service Contract Act (SCA) or the Davis-Bacon Act (DBA). However, the EO appears to extend coverage further, to the following types of contracts:

- procurement contracts for services or construction;
- contracts or contract-like instruments for services covered by the Service Contract Act;
- contracts or contract-like instruments for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or
- contracts or contract-like instruments entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

If a contract falls into one of the above-listed categories, the \$10.10 per hour minimum wage requirement attaches if "the wages of workers under such contract or contract-like instrument are governed by the SCA, the DBA or the Fair Labor Standards Act (FLSA)." The EO does not elaborate on this condition of coverage.

By referring separately to "services covered by the" SCA and "procurement contracts for services," the EO seems to suggest that service contracts that may be exempted under the SCA are subject to the EO. The scope of coverage question is made even more ambiguous by the reference to employees whose wages are governed by the FLSA.

Implementing regulations, which will provide further guidance as to the coverage and other aspects of the EO, are expected by October 2014. We will provide updates regarding this developing federal contractor obligation, and encourage you to contact the lawyers listed here or your regular Crowell & Moring contact with any questions.

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

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