

## CLIENT ALERT

### DOL Issues Final Rule to Increase the Minimum Wage for Federal Contractor Employees to \$15

December 1, 2021

On November 22, 2021, the Department of Labor (“DOL”) published its final rule, [“Increasing the Minimum Wage for Federal Contractors,”](#) which requires a \$15 hourly minimum wage for some, though not all, employees of certain federal contractors and subcontractors beginning January 30, 2022. The tipped hourly minimum wage will increase to \$10.10. The final rule further provides that the hourly minimum wage will also increase annually based on inflation, beginning January 1, 2023, at an amount to be determined by the Secretary of Labor. Currently, the hourly minimum wage for federal contractor workers is \$10.95 and the tipped hourly minimum wage is \$7.65.

The final rule implements President Biden’s April 27, 2021 [Executive Order \(“EO”\) 14026](#), which mandated an increase in the minimum wage of employees of contractors and subcontractors who hold certain types of government contracts or subcontracts. The final rule largely tracks DOL’s [proposed rule](#) issued in August 2021, which Crowell [previously summarized](#). EO 14026 builds on President Obama’s [EO 13658](#), which raised the hourly minimum wage to \$10.10. But EO 14026 and the DOL’s final rule depart from EO 13658 in several ways, including the elimination of the tipped minimum wage for federal contract workers by 2024, and a revised definition of a “new contract” covered by the rule, as described below.

The new minimum wage requirements will apply to certain employees of contractors and subcontractors who hold the following four categories of contracts: (i) Davis Bacon Act (“DBA”) covered contracts for construction; (ii) Service Contract Act (“SCA”) covered service contracts; (iii) concessions contracts; and (iv) contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public. Grants, contracts for construction that are excluded from DBA coverage, service contracts that are exempted from the SCA, and contracts with Indian Tribes are expressly excluded from coverage. The requirements, on their face, also do not apply to contractors and subcontractors who hold only supply contracts.

The final rule clarifies that only employees performing work “on or in connection with” covered contracts are covered by the requirements. Specifically, an employee performs work “on” a contract when he or she “directly performs the specific services called for by the contract’s terms.” This necessarily includes any worker who is entitled to be paid prevailing wages under the DBA or the SCA. A worker performs “in connection with” a contract when their “work activities are necessary to the performance of a contract but are not the specific services called for by the contract.” For example, a payroll clerk who is not a DBA-covered employee directly performing work on a construction contract, but whose services are necessary to the performance of the contract, is considered an employee performing work “in connection with” a covered contract.

In terms of timing, the requirements will apply to “new contracts” entered on or after January 30, 2022, as well as existing contracts that are renewed, extended, or for which an option is exercised on or after that same date. This is a key departure from EO 13658, which was not triggered by the unilateral exercise of a pre-negotiated option to renew or extend an existing contract. For contracts that were entered into prior to January 30 but extended or renewed afterwards, the requirements only

apply prospectively. The final rule also provides an exception for contracts that result from a solicitation issued prior to January 30, 2022 and that were entered into on or between January 30 and March 30, 2022.

“Last, the final rule also applies to independent agencies, which were “strongly encouraged” but not required to comply with wage requirements set under President Obama’s EO 13658., The rule also expands the geographical application from the 50 States and the District of Columbia to include specified U.S. territories.

Contractors are encouraged to review their current and prospective federal contracts to determine whether EO 14026’s mandatory minimum wage will apply, and should be prepared to adjust the minimum wage accordingly for any new contracts issued on or after January 30, 2022, including existing contracts that are renewed, extended, or for which an option is exercised.

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

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