

CLIENT ALERT

President Biden Signs Executive Order Mandating \$15 Minimum Wage for Certain Employees on Certain Federal Contracts

Apr.29.2021

On April 27, 2021, President Biden signed an Executive Order (the “EO”) increasing the hourly minimum wage for certain federal government contractors (and subcontractors) to \$15.00 per hour (\$10.50 per hour for tipped workers), beginning January 30, 2022. Beginning in January 2023, the applicable minimum wage rate will be adjusted annually based on the annual percentage increase in the Consumer Price Index.

The executive order supersedes the Obama-era Federal Minimum Wage Executive Order 13658 and, like that EO, applies to contracts (and subcontracts) for concessions, those covered by the Service Contract Act, or Davis Bacon Act, as well as contracts in “connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.” The minimum wage requirement applies to all employees “working on or in connection with” a covered contract.

The EO also increases the minimum wage for tipped employees working on covered contracts or subcontracts to at least \$10.50 per hour beginning January 30, 2022, with increases to 85% of the then existing required wage for covered non-tipped employees in January 2023 and 100% of the then existing required wage for covered non-tipped employees in January 2024. Amounts earned on account of tips will be combined with the hourly wage paid by the employer to determine whether a tipped employee’s wage satisfies the minimum wage requirements.

Implementing regulations will be issued by the Department of Labor (DOL) no later than November 24, 2021, and will provide more guidance on contractors’ obligations for compliance. A key question is whether the DOL will provide greater guidance as to what constitutes work performed “in connection with” a covered contract, as that phrase will determine the ultimate breadth of the new EO. The final rule implementing the Obama-era mandate, referenced above, utilized the same “in connection with” language and provided some clarification regarding how to interpret that phrase. It remains to be seen whether the regulations implementing this new EO will adopt the same guidance. Solicitations for covered contracts issued sixty days after the regulations must incorporate the new minimum wage requirement in the solicitation; assuming the regulations are issued by the November date specified in the EO, new covered contracts, as well as contract extensions or renewals of an existing contract, entered into on or after January 30, 2022 must include the new minimum wage requirements.

Employers with covered contracts or subcontracts should review their current compensation practices to determine the impact of the EO and what, if any, wage rate adjustments they may need to make by January 30, 2022 to ensure compliance with the new requirements.

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

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