

Legislative Blast October 2014*

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UNITED STATES LABOR DEPARTMENT ISSUES FINAL RULE IMPLEMENTING MINIMUM WAGE FOR FEDERAL CONTRACTORS OF \$10.10 PER HOUR STARTING JANUARY 1, 2015 PURSUANT TO PRESIDENTIAL EXECUTIVE ORDER

On February 12, 2014, President Obama signed Executive Order 13658, entitled “Establishing a Minimum Wage for Contractors,” to raise the minimum wage to \$10.10 for all workers on Federal construction and service contracts. According to the Obama Administration, the President took this executive action because boosting wages lowers turnover and increases morale, and will lead to higher productivity overall. The Administration believes raising wages will improve the quality and efficiency of services provided to the government. The Executive Order directed the Department of Labor to issue regulations to implement the new Federal contractor minimum wage. The Final Rule was published on October 7, 2014, with an effective date of December 8, 2014, for wages earned by covered employees beginning January 1, 2015.

Key Provisions of the Final Rule:

The final rule defines key terms used in the Executive Order, including *contracts, contract-like instruments, and concessions contracts*. The final rule makes clear that the Executive Order minimum wage requirement applies to all contracts for construction covered by the Davis-Bacon Act; contracts for services covered by the Service Contract Act; concessions contracts, such as contracts to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment on Federal property; and contracts to provide services, such as child care or dry cleaning, in Federal buildings for Federal employees or the general public.

The final rule provides guidance for contractors on their obligations under the Executive Order. The final rule sets forth the standards that contractors should apply to determine whether their workers are covered by the Executive Order, recordkeeping requirements, and where to find the required rate of pay for all workers, including tipped workers and workers with disabilities.

The final rule establishes an enforcement process that should be familiar to most government contractors and will protect the right of workers to receive the new \$10.10 minimum wage. The Department of Labor generally has adopted existing mechanisms for enforcing long-established prevailing wage laws to enforce the provisions of the Executive Order.

The final rule confirms that around 200,000 workers will benefit from the Executive Order, according to the Obama Administration.

Final Rule Coverage:

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Executive Order 13658 applies to new contracts and replacements for expiring contracts with the Federal Government that result from solicitations issued on or after January 1, 2015, or to contracts that are awarded outside the solicitation process on or after January 1, 2015.

Executive Order 13658 applies to four major categories of contractual agreements:

- procurement contracts for construction covered by the Davis-Bacon Act (DBA);
- service contracts covered by the Service Contract Act (SCA);
- concessions contracts, including any concessions contract excluded from the SCA by the Department of Labor's regulations at 29 CFR 4.133(b); and
- contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Workers Entitled to the Executive Order Minimum Wage:

Workers performing on or in connection with covered Federal contracts whose wages are governed by the FLSA, the SCA, or the DBA are generally entitled to receive the Executive Order minimum wage for all time spent performing on or in connection with covered Federal contracts. The Executive Order therefore generally applies to the following categories of workers performing on or in connection with covered Federal contracts: (1) employees who are entitled to the FLSA minimum wage; (2) service employees who are entitled to prevailing wages under the SCA; and (3) laborers and mechanics who are entitled to prevailing wages under the DBA. The Executive Order specifically provides that workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are entitled to receive the Executive Order minimum wage. If a worker is entitled to a wage rate higher than the Executive Order minimum wage pursuant to another Federal, State, or local law (e.g., the SCA or DBA), the worker must be paid the higher wage rate.

The Department's final rule specifically notes that the minimum wage protections of the Executive Order extend broadly to protect FLSA-, SCA-, and DBA-covered workers performing "on" covered contracts (i.e., workers directly performing the specific services or construction called for by the contract's terms) as well as workers performing "in connection with" covered contracts (i.e., workers performing other duties necessary to the performance of the contract). For example, the Executive Order minimum wage applies to FLSA-covered workers who provide support on SCA- and DBA-covered contracts that is necessary for the performance of the contract, such as an FLSA-covered security guard monitoring a DBA covered project for the entire work week.

Workers NOT Covered by the Executive Order and the Final Rule:

The Executive Order and the final rule contain a few limited exclusions from coverage for certain workers. For example, workers who are employed in a bona fide executive, administrative, or professional capacity and who consequently are exempt from the FLSA's minimum wage and overtime requirements are not entitled to receive the Executive Order minimum wage. FLSA-covered workers performing "in connection with" covered contracts are also excluded from coverage of the Executive Order if they spend less than 20% of their work hours in a particular workweek performing in connection with covered contracts.

Source: U.S. Department of Labor