

Federal Contractor \$15 Minimum Wage Will Apply Beginning January 30, 2022

By Laura A. Mitchell, Leslie A. Stout-Tabackman and F. Christopher Chrisbens

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President Joseph Biden has fulfilled a promise to significantly increase the minimum wage for federal contractor workers working “on or in connection with” a covered federal contract. He has issued an executive order raising the minimum wage for these workers from \$10.95 an hour to \$15 an hour beginning 2022.

When announcing the “[Executive Order on Increasing the Minimum Wage for Federal Contractors](#),” [President Biden said](#) the higher wage “will benefit many women and people of color who likely have children and are the breadwinners in their households It will help improve the economic security of their families and narrow racial and gender disparities in income.”

As with many executive orders, the details will be left to implementing regulations to be issued by the U.S. Department of Labor (DOL) and a Federal Acquisition Regulation (FAR) amendment to be issued by the FAR Council. The order provides, “Such regulations shall include both definitions of relevant terms and, as appropriate, exclusions from the requirements of this order.” For example, the regulations are expected to provide guidance and illustrations regarding the meaning of “working on or in connection with” a covered federal contract (like the regulations implementing a similar executive order from President Barack Obama).

New Wage Rate Does Not Apply to All Federal Contractors, Workers

The \$15 wage rate applies to the following types of federal contracts:

- Procurement contracts for services or construction;
- Service Contract Act (SCA) contracts;
- Concession contracts;
- Contracts related to federal property and the offering of services the general public, federal employees, and their dependents; and
- The wages of workers under such contracts are governed by the Fair Labor Standards Act, the SCA, or the Davis-Bacon Act.

Significantly, the executive order does not apply to:

- Grants;
- Contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act; or
- Any contracts specifically excluded by the implementing regulations.

For those who remember [President Obama’s executive order](#) raising the federal contractor wage to \$10.10 an hour, Biden’s order is substantially the similar.

New Wage Primarily Applies to “New” Solicitations as of January 30, 2022

In addition to applying only to new contracts and contract solicitations as of January 30, 2022, the \$15 wage also will apply to any:

- Extension or renewal of an existing contract; and
- Exercise of an option on an existing contract.

Despite the “new contract” limitation, the executive order “strongly” encourages federal agencies to require the \$15 wage for “all existing contracts and ... solicitations issued between the date of this order and the [effective dates set forth in this section, and contracts ... entered into between the date of this order and the effective dates set forth in this section”

Meet the Authors



[Laura A. Mitchell](#)

Principal
Denver 303-225-2382
Email



[Leslie A. Stout-Tabackman](#)

Principal
Washington, D.C. Region 703-483-8345
Email



[F. Christopher Chrisbens](#)

Of Counsel
Denver 303-225-2381
Email

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Similarly, “agencies are strongly encouraged” to require the new wage “where agencies have issued a solicitation before the effective date ... and entered into a new contract ... resulting from such solicitation within 60 days of such effective date.”

Thus, it is possible to see a provision requiring a \$15 minimum wage in solicitations issued and contracts awarded prior to January 30, 2022.

Next Steps

The executive order directs the DOL to issue regulations by November 24, 2021. Federal contractors will have the opportunity to comment on proposed regulations once published in the *Federal Register*.

Within 60 days of the final regulations, the FAR Council must amend the FAR to incorporate the order's directives into federal procurement solicitations and contracts.

Preparing for the \$15 Minimum Wage

The new minimum wage may not be an issue for some contractors because the contractor is already paying at or above \$15 per hour, the contractor does not have a covered contract, or many of its employees are not working “on or in connection with” a covered federal contract.

Thus, a starting point will be to determine if a contractor has or anticipates entering into a covered contract and whether the employees are likely to be providing work directly or indirectly related to such contract are or will be earning \$15 per hour by January 30, 2022.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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