

Federal Contractors Should Prepare for 2025 Minimum Wage Hike as Legal Challenges Unfold

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October 8, 2024

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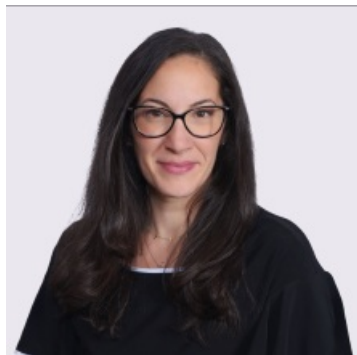
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Federal contractors may need to be prepared to increase pay for employees working on, or in connection with, covered federal government contracts. The hourly minimum wage for employees performing work on federal contracts will rise from \$17.20 to \$17.75 on Jan. 1, 2025, the Department of Labor (DOL) has [announced](#). The new minimum wage rate will apply in full to tipped and non-tipped employees alike, as well as to workers with disabilities.

Contracts entered into, renewed, or extended prior to Jan. 30, 2022, generally remain subject to the minimum wage rate under Executive Order 13658. The operative minimum wage for those contracts will increase from \$12.90 to \$13.30 per hour.

There are a number of pending lawsuits challenging the Biden Administration's authority to impose the minimum wage increase for federal contractors. It is unlikely these cases will be resolved prior to Jan. 1. Employers should not count on a reprieve before the mandated wage hike takes effect.

500,000 Employers Affected

[Executive Order 14026](#), signed by President Joe Biden on April 27, 2021, increased the minimum hourly wage for employees working on federal government contracts and provided for annual increases to the minimum wage. The DOL issued regulations implementing EO 14026 and the Federal Acquisition Regulatory Council (FARC) amended the federal procurement regulations accordingly. On Sept. 30, 2024, the DOL published formal notice in the Federal Register of the new rate to take effect Jan. 1, 2025.

EO 14026 applies to employees of entities that contract with the federal government who work on or in connection with a covered federal government contract — an estimated 500,000 employers.

Lawsuits

Meanwhile, ongoing lawsuits contend that President Biden exceeded his authority under the Procurement Act when he issued EO 14026 and the DOL likewise lacked authority to implement the EO's mandated minimum wage increases. Litigation is pending in three federal circuit courts of appeal:

- The U.S. Court of Appeals for the Fifth Circuit will consider the Biden Administration's appeal of a 2023 decision invalidating EO 14026. The [Texas district court held](#) that the executive order violated the Procurement Act. However, not wishing to "encroach" upon two other federal courts that had upheld EO 14026, the court issued a narrow injunction barring application of the mandated wage increases as to the federal contracts held by the state governments of Louisiana, Mississippi, and Texas. (*Texas v. Biden*, No. 23-40671)

- In a case on appeal before the Ninth Circuit, a federal district court in Arizona, on Jan. 6, 2023, rejected a lawsuit brought by a coalition of states (Arizona, Idaho, Indiana, Nebraska, and South Carolina) challenging the EO. The appeals court heard oral argument in the case in February 2024. (*Nebraska v. Walsh*, No. 23-15179)
- In April 2024, the Tenth Circuit held that a group of outfitters and recreation providers with contracts to operate on federal lands were not likely to show that the DOL lacked statutory authority to issue a rule implementing the federal contractor minimum wage hike. The circuit court decision upheld the ruling of a Colorado federal district court that EO 14026 was lawful. The appeals court noted that similar executive orders imposing minimum wage requirements had been issued during the past three presidential administrations and were upheld. On Aug. 28, 2024, the plaintiffs filed a petition for certiorari asking the U.S. Supreme Court to overturn the Tenth Circuit's decision. (*Bradford v. U.S. Department of Labor*, No. 24-232)

Takeaways for Federal Contractors

Legal challenges to EO 14026 are ongoing, and courts have been inconsistent on whether President Biden exceeded his authority under the Procurement Act. The Supreme Court may decide to resolve the matter definitively. The outcome of the presidential election may also be determinative, as a new presidential administration may opt to change course.

To navigate the uncertain legal terrain, federal contractors should:

- Stay abreast of the ongoing litigation in the appellate courts to anticipate changes to the evolving legal landscape.
- Partner with attorneys who regularly advise federal contractors and who understand how these rulings may impact your contracts and compliance obligations.
- Prepare to comply with the Jan. 1, 2025, increase. Any relief from the wage mandate likely would come after the effective date. Also, courts ultimately may uphold the EO.

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