

IT'S OFFICIAL: \$10.10 MINIMUM WAGE FOR GOVERNMENT CONTRACTORS

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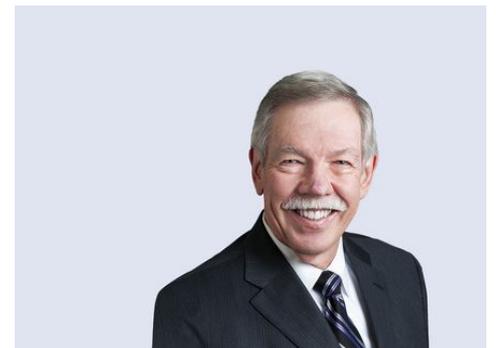
The U.S. Labor Department (DOL) published final regulations implementing President Obama's Executive Order, raising the minimum wage to \$10.10 per hour for workers on government contracts. The new minimum wage will take effect January 1, 2015, and will be adjusted annually, as it is indexed to the consumer price index for urban wage earners. The new minimum wage will apply to some, but not all, employees working directly on covered federal contracts, and it will apply to many others who do not work on the contract but work "in connection" with it.

TO WHICH CONTRACTS DOES IT APPLY?

First, the minimum wage does not apply to government contracts and subcontracts for the manufacturing or furnishing of materials, supplies, articles or equipment which are covered under the Walsh-Healey Public Contracts Act. It also does not apply to grants or cooperative agreements, nor to contracts and agreements with – and grants to – Indian tribes. But the new minimum wage rule does apply to most other government contracts, subcontracts and contract-like instruments, such as those covered by the Service Contract Act (SCA), for services, or the Davis-Bacon Act, for construction.

Excluded are most service contracts exempt from the SCA such as contracts for public utility service, including electric light and power, water, steam and gas. Interestingly, the new rule includes contracts where the government or its employees are not directly benefited or involved, such as concessions contracts where the government grants a right

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Thomas Paul Rebel

Senior Counsel

[404.240.4255](tel:404.240.4255)

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to use federal property for furnishing services such as food, lodging, automobile fuel, and recreational equipment. It also includes concession contracts which are excluded from SCA coverage such as contracts to operate souvenir shops or provide food or lodging in national parks.

The new rule applies to contracts for which a solicitation is first issued on or after January 1, 2015. If no solicitation is issued, it applies to contracts entered into on or after January 1, 2015. It does not apply to contracts extended through exercise of a unilateral option, but it will apply to contracts that have been modified in scope or that have been extended via negotiations on or after that date. Both contracting agencies and contractors must include a minimum wage clause in their contracts or subcontracts. Contractors and subcontractors must notify workers of the applicable minimum wage rate.

WHICH WORKERS ARE AFFECTED?

For those contracts and subcontracts that are covered, workers who work directly on the federal contract or subcontract are covered except for those who would be exempt from the minimum wage under the Fair Labor Standards Act, such as bona fide executive, administrative, and professional employees. Also, workers paid under special certificates for learners, apprentices, and students are excluded.

But workers paid under certificates for disabled individuals are included. Workers who work solely "in connection with" the contract (that is, they do not work "on" the contract) are included unless the employer can prove that the employee spent less than 20% in a workweek working on supporting the government contract. However, only the hours spent working on or in connection with the covered contract are subject to the contract minimum wage. Workers are considered to be working in connection with the contract if they perform duties "necessary to the performance of the contract." That's a broad definition, including administrative employees and others not even at the site where services are being rendered or construction is occurring.

Tipped employees are subject to a lower initial minimum cash wage of \$4.90 per hour (compared to the FLSA tipped employee minimum cash wage of \$2.13 per hour) and come under the regulations. This amount will be increased each

January by the lesser of \$.95 per hour or the amount needed to bring the tipped employee wage up to 70% of the indexed minimum wage.

OTHER PROVISIONS

Retaliation against an employee for filing a complaint, instituting a proceeding or testifying is prohibited. Violations will be investigated by the Wage and Hour Division (WHD), and the contracting Agency, on request of the WHD, or on its own initiative, is expected to withhold contract funds (or funds from another contract with the same contractor) in a sufficient amount to satisfy any minimum wage deficiency. Failure to comply can subject a contractor to suspension or cancellation of the contract and debarment. Contractors are also responsible for violations by their subcontractors.

For more information, contact the author at trebel@fisherphillips.com or 404.231.1400, or visit our [Wage/Hour blog](#).