



Proposed Federal-Contractor "Minimum Wage" Regulations Released (Updated 07 08 14)

Insights

6.13.14

The U.S. Labor Department has released its proposed regulations implementing Executive Order 13658, President Obama's directive to raise the minimum-wage rate for workers on federal contracts from \$7.25 per hour to \$10.10 per hour (subject to annual increases after 2015). We wrote about this initiative earlier in the year; we will not repeat those discussions here.

Identifying all ramifications of the 181-page Notice of Proposed Rulemaking will necessitate a careful review. However, at least some ambiguities of the Executive Order itself appear to have been clarified.

Contract Coverage, Required Clauses

Generally speaking (and subject to some exceptions), the proposed regulations will apply to "new" contracts and "contract-like instruments" (including replacements for expiring contracts) arising on or after January 1, 2015 and falling into one of four general categories:

- Procurement contracts for construction covered by the Davis-Bacon Act itself (but not those subject only to the Davis-Bacon Related Acts);
- Most service contracts covered by the Service Contract Act;
- "Concessions contracts" granting the right to use federal property to provide services for the principal purpose of furnishing food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment; and
- Contracts involving leases of federal property and licenses to use such property for the purpose of offering services to the federal government, to its personnel, or to the general public.

Covered contracts and subcontracts must include certain clauses incorporating the requirements of the Executive Order and the regulations. These proposed clauses are included in the NPRM's Appendix A (link to reproduction below).

Covered "Worker"

The NPRM says that a "worker" entitled to the Executive Order's minimum wage will be one:

- Who performs "on or in connection with" a covered contract (that is, one who does the specific things called for in the contract *as well as* one whose work is "necessary to the performance of

things called for in the contract as well as one whose work is "necessary to the performance of the contract"); and

- Whose wages under the contract are governed by the federal Fair Labor Standards Act, by the Davis-Bacon Act, or by the Service Contract Act.

"Worker" is used in a broad sense, including that USDOL says the term is intended to sweep-in those who would not otherwise be "service employees" under the Service Contract Act or "laborers or mechanics" under the Davis-Bacon Act. The proposals could also be read as attempting to dispense with the Davis-Bacon Act's limitation to activities performed "directly on the site of the work." And because the scope of the term "worker" will be applied without regard to "the contractual relationship alleged to exist between the individual and the employer," it will not matter to USDOL that a person is said to be an independent contractor.

However, the Executive Order and the regulations will not apply to individuals who are employed "in a bona fide executive, administrative, or professional capacity" within the meaning of USDOL's regulations found at 29 C.F.R. [Part 541](#).

The Bottom Line

There is *much* more to the NPRM than those points we have highlighted above. Any comments, suggestions, or criticisms must be submitted to USDOL not later than 30 days after the proposed regulations appear in the *Federal Register*.

Every employer who is or might be affected by these provisions should immediately review the publication in detail and should make management's views known within the 30-day timeframe.

UPDATED 06 17 14: The proposed regulations have now been officially published in the *Federal Register*. Comments, suggestions, or criticisms must be submitted by July 17, 2014.

UPDATED 07 08 14: The U.S. Labor Department has extended the deadline for comments, suggestions, or criticisms. USDOL must now receive these submissions on or before July 28, 2014.

[Notice of Proposed Rulemaking Appendix A.pdf \(286.91 kb\)](#).