

DOL Plans Minimum-Wage Hike for Contractors, Help for Tipped Workers

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The U.S. Department of Labor (DOL) published its spring regulatory agenda on June 11, highlighting the government's intent to increase the minimum wage for federal contractors. Other planned actions include rulemaking to address the economic security of tipped workers and modernizing the Davis-Bacon and Related Acts regulations.

"The proposed regulatory change implementing the increase to the minimum wage for federal contractors was expected because of the president's recent executive order mandating this," said Craig Leen, an attorney with K&L Gates in Washington, D.C., and former director of the Office of Federal Contract Compliance Programs (OFCCP).

It is likely only a first step in the administration's effort to increase the Fair Labor Standards Act (FLSA) minimum wage overall, predicted Cheryl Behymer, an attorney with Fisher Phillips in Columbia, S.C.

"Labor costs are often one of the most costly components of a contract," she noted. "By raising the minimum wage, the overall labor costs increase, which narrows the contractor's profitability margin." This may result in increased outsourcing to lower costs.

The spring regulatory agenda (<https://www.reginfo.gov/public/>) also addresses proposed withdrawal of the joint employer standards (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/dol-proposes-withdrawing-two-rules.aspx), she pointed out. "To the extent the joint employer standards broaden the definition and create increased employer status, the higher mandatory wage may also be imposed on entities that might otherwise have not considered themselves to be covered," Behymer said.

Planned Increase in Minimum Wage for Federal Contractors

In response to Executive Order 14026, "Increasing the Minimum Wage for Federal Contractors," the DOL's Wage and Hour Division is drafting regulations that will increase the hourly minimum-wage rate paid by parties that contract with the federal government to \$15 for those employees working on or in connection with a covered federal government contract.

The executive order (www.shrm.org/resourcesandtools/hr-topics/compensation/pages/biden-signs-order-hiking-federal-contractors-minimum-wage.aspx) called for:

- Increasing the hourly minimum wage for federal contractors to \$15. Starting Jan. 30, 2022, all agencies will need to incorporate a \$15 minimum wage in new contract solicitations, and by March 30, 2022, all agencies will need to implement the minimum wage into new contracts. Agencies must also implement the higher wage into existing contracts when the parties exercise their option to extend such contracts, which often occurs annually.
- Continuing to index the minimum wage to an inflation measure. Every year after 2022, the minimum wage will be automatically adjusted to reflect changes in the cost of living.

- Eliminating the tipped minimum wage for federal contractors by 2024. Federal statute allows employers of tipped workers to pay a sub-minimum wage so long as their tips bring their wage up to the level of the minimum wage. The Obama administration had raised the wages for tipped workers but didn't completely phase out the sub-minimum wage for these workers. The executive order "finishes that work and ensures tipped employees working on federal contracts will earn the same minimum wage as other employees on federal contracts," the White House said.

Under the executive order, federal contractors must ensure that any subcontractors they engage also agree that the minimum wage paid to workers employed in the performance of the subcontract will be at least \$15 an hour.

"The executive order is intended to promote economy and efficiency in federal contracting," the White House said, and it "ensures that hundreds of thousands of workers no longer have to work full time and still live in poverty."

The current \$10.95 minimum-wage rate for federal contract workers represents an annual income of roughly \$21,900

([https://www.convertunits.com/hourly/10.95#:~:text=In%20this%20case%2c%20you%20can%2cincome%20of%20\\$20%2c200%20per%20year.](https://www.convertunits.com/hourly/10.95#:~:text=In%20this%20case%2c%20you%20can%2cincome%20of%20$20%2c200%20per%20year.)), assuming a consistent 40-hour workweek.

An hourly wage rate of \$15 is roughly \$30,000

([https://www.convertunits.com/hourly/15#:~:text=15%20dollars%20per%20hour%20working%202%2c000%20hours&text=In%20this%20case%2c%20you%20can%2cincome%20of%20\\$30%2c000%20per%20year.](https://www.convertunits.com/hourly/15#:~:text=15%20dollars%20per%20hour%20working%202%2c000%20hours&text=In%20this%20case%2c%20you%20can%2cincome%20of%20$30%2c000%20per%20year.)) annualized.

During an April 27 press briefing, White House Press Secretary Jen Psaki called contract workers "critical to the functioning of federal government—from cleaning professionals and maintenance workers, to nursing assistants who care for the nation's veterans, to cafeteria and other food-service workers who ensure we all have healthy and nutritious food to eat, to the laborers who build and repair federal infrastructure."

Tips

The Wage and Hour Division also will address the economic security of tipped workers, the DOL briefly noted when it released the regulatory agenda.

Through a proposed rule, the DOL wants to withdraw a part of a prior rule that limits the situations in which the DOL can assess monetary penalties against employers.

Through another proposed rule, the DOL wants to further delay the effective date of three parts of a prior final rule: two parts that address penalties and one provision that addresses how the FLSA's tip-credit rules apply to employees who perform both tipped and nontipped tasks. "The additional eight-month extension would provide the department the opportunity to evaluate additional information about the questions of law, policy and fact raised by these portions of the 2020 tips final rule," the DOL said in March (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/dol-allows-certain-parts-of-tip-sharing-rule-to-take-effect.aspx).

Modernization of Davis-Bacon and Related Acts Regulations

The DOL noted in its regulatory agenda that it will modernize the Davis-Bacon and Related Acts (DBRA) regulations.

The DBRA requires the payment of locally prevailing wages and fringe benefits to laborers and mechanics as determined by the department. The Wage and Hour Division is proposing to update the regulations implementing the DBRA to ensure workers are truly paid prevailing wages on federal construction contracts.

Climate Change Regulations

Finally, the Employee Benefits Security Administration is reviewing regulations under Title I of the Employee Retirement Income Security Act in response to executive orders to address climate change. Affected regulations are projected to include those on financial factors in selecting plan investments and fiduciary duties regarding proxy voting and shareholder rights.

"Socially conscious investors want to maximize their savings and do the planet some good but are frustrated by the investment options available to do that," the DOL said in a release announcing the issuance of the regulatory guidance.

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