

Federal Contractors Need to Plan for Upcoming Minimum Wage Increases

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On April 27, 2021, President Biden issued an Executive Order raising the minimum wage for federal contractors from \$10.95 per hour to \$15.00 per hour, effective January 30, 2022.

There do exist some caveats to this effective date. The new federal contractor minimum wage will be “phased in” on January 30, 2022, starting with new contracts issued on or after this date, and also applying to any existing contract that is subsequently extended or renewed on or after January 30, 2022. The Executive Order “strongly encourages”--but does not require--that contracts entered into prior to January 30, 2022 observe the new \$15.00 minimum wage. Only when the contract is extended or renewed after January 30, 2022 will the \$15.00 minimum wage requirement take effect for contracts entered into prior to the effective date. If an option in a contract entered into prior to January 30, 2022 is exercised after this date, then the \$15.00 minimum wage requirement will also take effect.

Further, beginning January 1, 2023 (and annually thereafter), the minimum wage for federal contractors will be adjusted to account for inflation, and the new minimum can never be lower than the one that preceded it. Any adjustments will be published by the Secretary of Labor at least 90 days before any new minimum wage is to take effect.

In addition to these changes, the current tipped federal contractor minimum wage, which historically has been lower than the standard federal contractor minimum wage, will be increased to \$10.50 per hour, beginning January 30, 2022. On January 1, 2023, this tipped minimum wage will be increased to 85% of the standard federal contractor minimum wage. Finally, the tipped minimum wage will be phased out entirely by January 1, 2024.

The Executive Order also revokes a previous Executive Order issued by the Trump Administration that exempted outfitters and guides operating on federal lands from minimum wage requirements. As with the previous provisions, this revocation is effective January 30, 2022.

The Secretary of Labor will issue additional guidance and regulations by November 24, 2021. These regulations will address implementation and additional requirements of the Executive Order. The regulations will also include definitions of relevant terms and exclusions.

In anticipation of these new regulations and the effective date of the Executive Order, federal contractors and subcontractors subject to the new minimum wage requirement should begin planning to price all new 2022 federal contract work using the \$15.00/hour minimum wage. Federal contractors and subcontractors should also prepare to make Requests for Equitable Adjustment and seek appropriate contract price adjustments when the new federal minimum wage is applied to contract extensions or contract renewals, or when options within a contract are exercised.

Although the regulations addressing this Executive Order may not be promulgated until November 24, 2021, and although the Executive Order itself does not go into effect until January 30, 2022, federal contractors and subcontractors should begin making necessary preparations now. In the meantime, contact your Vorys lawyer if you have questions about the Executive Order or federal contractor minimum wage laws in general.