



Labor & Employment ADVISORY ■

JUNE 20, 2014

Federal Contractor Update: DOL Issues Proposed Rule Setting \$10.10 as Minimum Wage, and Obama to Issue Order Banning LGBT Discrimination

The U.S. Department of Labor has issued a proposed set of regulations to implement a February executive order from President Obama calling for an increase in the minimum wage for employees of federal government contractors. Additionally, the Obama Administration announced earlier this week that the President intends to issue an executive order banning discrimination by federal contractors on the basis of sexual orientation. These executive actions follow several others issued earlier this year impacting federal contractors and evidencing the administration's eagerness to advance its employment policy agenda despite a lack of congressional support.

DOL Issues Proposed Rule Setting \$10.10 as Minimum Wage

Last week, the U.S. Department of Labor (DOL) released a proposed rule to increase the minimum wage for all workers under federal contracts to \$10.10 per hour. The proposed rule follows President Obama's February 12 [executive order](#) directing the DOL to issue regulations to implement the increased minimum wage and other provisions of the order.

The DOL's [notice of proposed rulemaking](#) (NPRM) and related [fact sheet](#) define the parameters of the executive order and provide guidance for contractors on their obligations under the order. If adopted as currently drafted, the new regulations would:

- Increase the minimum wage for non-tipped workers under new federal contracts from \$7.25 to \$10.10 per hour, and from \$2.13 to \$4.90 an hour for tipped workers, and provide for subsequent annual increases to account for inflation.
- Apply to new contracts (including replacements for expiring contracts) with the federal government awarded on or after January 1, 2015.
- Apply broadly to four major categories of federal government contracts: (1) procurement contracts for construction covered by the Davis-Bacon Act (DBA); (2) service contracts covered by the Service Contract Act (SCA); (3) concessions contracts, including those excluded under the SCA; and (4) contracts to offer services on federal property or lands.

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- Exclude from coverage certain contracts, including grants, contracts with Indian Tribes, contracts for public utility services and contracts subject to the Walsh-Healey Public Contracts Act.
- Apply to the following categories of workers: (1) employees entitled to the FLSA minimum wage; (2) service employees entitled to prevailing wages under the SCA; and (3) laborers and mechanics who are entitled to prevailing wages under the DBA.
- Provide for complaints to be filed with the DOL Wage and Hour Division, and outline an administrative process that would include an investigation, hearing and informal complaint resolution.
- Provide remedies for violations, including payment of back wages and debarment.

Under the proposed regulations, the increased minimum wage would apply to all hours during which a worker is engaged in performing work on or in connection with a covered contract, either in performing specific services called for by the contract's terms or in performing other duties necessary to the performance of the contract. In situations where workers are not exclusively engaged in covered contract work, the federal contractor must keep accurate records segregating the periods in which a worker performed work on covered contracts from periods in which non-covered work was performed. Arbitrary assignments of time on the basis of a formula will not be sufficient. Alternatively, the federal contractor can pay the increased minimum wage for all hours worked. The segregation principles in the proposed regulations mimic existing regulations under the FLSA, DBA and SCA, and, according to the DOL, should not require already compliant federal contractors to adopt new practices.

Interested parties are invited to submit written comments on the proposed rule at www.regulations.gov on or before July 17, 2014. The DOL will review comments and issue a final rule by October 1, 2014.

The executive order and proposed rulemaking follow on the heels of failed Obama Administration efforts to muster support for the Fair Minimum Wage Act, a bill that would have raised the minimum wage for the entire workforce. Although the executive order and implementing regulations will have only marginal impact—the proposed rule suggests 200,000 workers total will be affected—a larger movement is taking place in the states. In the last year, eight states have enacted minimum wage increases and thirty other states have considered bills to do the same.

President Obama to Issue Order Banning LGBT Discrimination

On June 16, a White House official announced that the President has directed his staff to prepare an executive order prohibiting federal contractors from discriminating on the basis of sexual orientation or gender identity. The order is likely to build upon existing protections under Title VII, which generally prohibits employers, including federal contractors, from discriminating in employment decisions on the basis of race, color, religion, sex or national origin.

As with the other executive actions issued by the Obama Administration this year, this executive order follows unsuccessful attempts to pass more comprehensive legislation prohibiting LGBT discrimination, namely the Employment Non-Discrimination Act (ENDA).

For more information on executive actions issued this year, please see our [prior advisory](#).

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