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Legal Alerts

U.S. Government Requires Higher Minimum Wage for Certain Federal Contracts

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On February 12, 2014, President Obama signed Executive Order 13658 "Establishing a Minimum Wage for Contractors." The Executive Order (EO) raises the hourly minimum wage paid by federal contractors to most workers performing on covered Federal contracts to $10.10 per hour, beginning January 1, 2015. Also, beginning January 1, 2016, and annually thereafter, the minimum wage will increase in an amount determined by the Secretary of Labor, in accordance with the EO and implementing regulations

The link to the EO and the DOL website can be found here: For those wanting just a quick What? Who? and When?, here is a brief (and not comprehensive) explanation:

What Federal Contracts are Covered by the Executive Order (i.e., Covered Contracts)?

- The EO will apply only to new contracts (including amendments and purchase orders, as specified), entered into with the Federal Government on or after January 1, 2015, to be performed in the United States for (A) services, construction, or concessions when (B) the wages of the workers under such contracts are governed by the Fair Labor Standards Act (FLSA), the Service Contract Act (SCA), or the Davis-Bacon Act (DBA).

- For contracts covered by the SCA or the DBA, the EO will apply only to contracts at the dollar thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the FLSA, the EO will apply only to contracts that exceed the micro-purchase threshold, unless expressly made subject to the EO pursuant to Department of Labor (DOL) regulations. These implementing regulations are currently in draft and open for comment (see below).

- The EO will also apply to "contract-like instruments" to be defined by implementing DOL regulations.

What Federal Contracts and Instruments are Not Covered?

- Grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act; or any contracts expressly excluded by the proposed DOL regulations.
- Federal contracts (including task orders and purchase orders) entered into before January 1, 2015 and not amended or modified thereafter.

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- Federal contracts that are ***not*** for services, construction, or concessions.

Which Workers are Covered?

- *Generally:* workers performing on covered contracts whose wages are governed by the FLSA, SCA, or DBA. Thus, those employees working on covered contracts who are subject to the overtime requirements of the FLSA or the prevailing wage requirements of the SCA or DBA will be entitled to the new minimum wage.

- *Tips Included*: Tipped employees covered by the EO performing on covered contracts must receive a cash wage of at least $4.90, provided the employees also receive sufficient tips to equal the minimum wage of $10.10 per hour, when combined with the cash wage.

Which Federal Agencies?

- All federal agencies. In addition, the EO strongly encourages independent agencies to comply.

When Will the New Minimum Wage Begin? When Will the Regulations Come Out?

- The new minimum wage begins on January 1, 2015.

- On June 17, 2014, the DOL published proposed rules to implement EO 13658, as a first step in meeting the EO's requirement to issue final regulations by October 1, 2014.

- As required by the EO and to the extent practicable, the proposed rules will incorporate existing definitions, procedures, remedies, and enforcement processes under the FLSA, the SCA, and the DBA.

- Comments to the proposed regulations must be received on or before July 17, 2014.

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