

# Client Alert: Biden Raises Minimum Wage for Federal Government Contract Workers to \$15

## Publications

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President Biden is raising the minimum wage for workers under federal government contracts to \$15. In an executive order on April 27, 2021, Biden ordered that the Department of Labor develop rules to ensure that federal contract (and subcontract) employees are paid a minimum of \$15 starting in 2022. Contractors should expect to see a \$15 minimum wage in new contract solicitations and option modifications beginning on January 30, 2022.

This executive order provides that the minimum wage be adjusted automatically to reflect changes in the cost of living every year after 2022. It also eliminates some exceptions to the federal contract minimum wage. Specifically, it phases out the lower “tipped minimum wage” for federal contractors by 2024, meaning tipped employees working on federal contracts must be paid the same minimum wage as other government contract employees. And it includes federal contract workers with disabilities and outfitters/guides operating on federal lands.

The administration believes this executive order will affect hundreds of thousands of workers under federal contracts, including cleaning and maintenance workers, nursing assistants, and food service workers. It also notes that it will help many women and people of color.

For some government contractors, the new \$15 minimum wage may alter the competitive landscape in positive ways—creating a common floor for wages underlying a proposal and allowing government contractors to attract and maintain talent due to higher wages than similar employers in the commercial space. (The White House fact sheet on the executive order is clear that one goal is to increase upward pressure on wages in the commercial space.) Of course, the federal contractor minimum wage is only one of the policies affecting wages paid under government contracts. Some government contractors may see little impact because their government contract employees already receive more than \$15 per hour under existing requirements, such as the Service Contract Act, Davis Bacon Act, and related laws, which prescribe wage and benefit amounts for specific categories of workers in specific geographic areas. As always, contractors should pay careful attention to the specific wage and hour requirements in their solicitations and contracts.

Some additional details related to the executive order:

- Biden's \$15 minimum wage executive order follows a 2014 Obama executive order that had raised the government contract minimum wage to \$10.10. Biden had included a \$15 federal minimum wage in his coronavirus relief bill, but it was removed based on parliamentary rules in the Senate.
- The executive order recognizes and follows the typical regulatory process: it technically serves to direct the Department of Labor to engage in a rulemaking process by November 24, 2021, that will provide specific definitions and exclusions and, "to the extent practicable," incorporate definitions, principles, and processes from existing wage laws. After that process, it directs the FAR Council and agencies themselves to undertake necessary steps to implement the DOL regulations. Contractors will want to keep an eye out for these regulations.
- Agencies are "strongly encouraged" to implement the \$15 minimum wage in contracts issued before the effective dates in the executive order.
- The executive order includes within its scope "contract-like instruments" and specifically notes application to concession agreements, a common mechanism for providing services in federal facilities and properties, including national parks. Concession holders are among those most likely to be affected by this executive order. Grants are not included in the scope of the order.

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