



Federal Contractors Need to Track Wage Rules as New Administration Takes Reins

Insights

1.24.25

Now that President Donald Trump has returned to the oval office, federal contractors should be on the lookout for big changes that are likely to continue in the coming days and months. The president has already curtailed affirmative action and diversity, equity, and inclusion programs – and a controversial Biden-era order that raised the minimum wage for workers on covered federal contracts could be next. You should note that the minimum wage mandate is still effective as of now for most federal contractors, even though it has faced challenges in several courts and the U.S. Supreme Court recently declined to weigh in on the issue. Here's what you need to know about the executive order and what you might expect from the new administration.

How Did We Get Here?

- **Contractor Minimum Wage Order:** Under President Biden's Executive Order 14026, the applicable minimum wage rate for workers performing work on or in connection with covered federal contracts was raised to \$15 in 2022. The order provided a boost in wages for many workers across the country and increased labor costs for employers doing business with the federal government. It also phased out the lower tip-credit minimum wage for covered employees of federal contractors.
- **Annual Adjustments:** Pursuant to the order, on January 1, 2023, and annually thereafter, the Secretary of Labor increases the contractor minimum wage rate to reflect changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers.
- **Current Rate:** Most recently, on January 1 the rate was increased to \$17.75 per hour (for non-tipped and tipped employees alike).
- **Building on an Obama-Era Order:** The Biden-era order largely replaced President Obama's 2014 Executive Order 13658 – which established a minimum wage for covered employees of federal contractors – by providing broader coverage and higher rates. Biden's order superseded the Obama order to the extent it was inconsistent and applies to all new and renewed contracts following the date of the new order. Therefore, there remains a small number of federal contracts that are still covered by Obama's Executive Order 13658. For those remaining contracts still covered by Obama's order, as of January 1, the minimum wage is \$13.30 per hour (\$9.30 for tipped employees performing work on in connection with covered federal contracts).

- **Rescinding a Trump-Era Order:** The Biden Executive Order also revoked President Trump's Executive Order 13838 from his first term, which exempted from President Obama's minimum wage increase those contracts or contract-like instruments that were entered into in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on public lands.

Legal Battles Emerge

Biden's executive order raising the minimum wage for federal contractors has been challenged in multiple courts with different results:

- The 9th U.S. Circuit Court of Appeals issued a decision on November 5 that essentially said the minimum wage mandate **is unlawful** – but the case is pending further litigation and the rate increase is still effective unless and until a district court decides to halt it.
- The 10th Circuit, however, had a different view. It held that the contractor minimum wage is likely a **lawful** exercise of the president's power when it comes to federal contractor rules. The 10th Circuit refused to halt the order during ongoing litigation.
- There is another appeal currently pending in the 5th Circuit in a case where the district judge did temporarily halt the order – but only as it applies to Texas, Louisiana, and Mississippi as state employers, and not to private employers in those states or anywhere else. So, once again, the wage mandate is still in effect for most federal contractors unless and until an injunction applies.
- The U.S. Supreme Court **declined to weigh in** on the 10th Circuit's ruling, but we may see the Justices pick up the issue at a later date. It's also possible that this issue will become moot as President Trump reviews and rescinds executive orders from the prior administration (more on that below).

What Should You Do Now?

Regardless of what happens with the legal battles, President Trump is expected to continue making big changes, which may include rescinding the contractor minimum wage. So, federal contractors should tune in to see how the new administration's actions in the first 100 days will impact your workforce operations. In the meantime, you may want to take the following pro-active steps:

- **Ensure compliance with current minimum wage rules:** Review your pay practices to ensure you have properly determined whether you have a covered contract or subcontract. If covered contracts are held, be sure to comply with the most up-to-date minimum wage requirements.
- **Be mindful of federal prevailing wage laws:** Although the status of the minimum wage executive order is in question, many federal contracts will also be covered by a prevailing wage law – such as the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act. These

prevailing wage laws will still apply even if the minimum wage executive order is overturned by the courts or rescinded by the Trump administration.

- **Monitor developments:** It's possible that we will see significant changes soon, whether from the new administration or the courts. Sign up to [receive our insights](#) and stay updated on the latest news impacting federal contractors.
- **Work with your legal counsel** to create an action plan focused on compliance as changes occur.

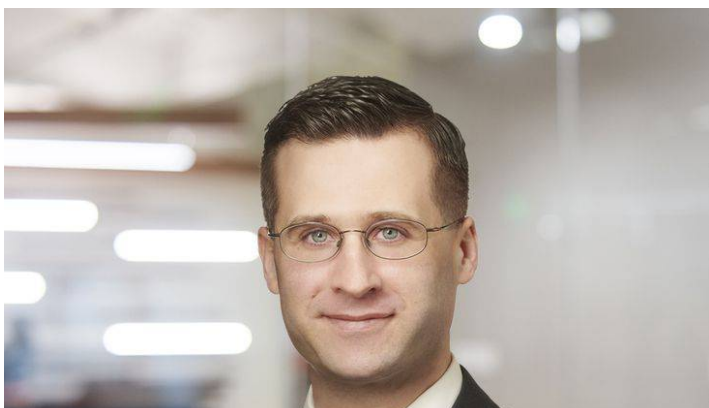
Conclusion

Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have any questions, please consult your Fisher Phillips attorney, the authors of this Insight, or any member of our [Affirmative Action and Federal Contract Compliance Practice Group](#).

Related People



Sheila M. Abron
Partner
803.740.7676
Email





Patrick M. Dalin
Partner
610.230.6112
Email

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