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Executive Order on Increasing the Minimum Wage for Federal Contractors

On April 27, 2021, President Biden issued an Executive Order under his authority as President and through the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, increasing the minimum wage paid to workers employed for federal government contracts and subcontracts.¹ Here are the main points of the Order that will directly affect federal contractors:

- Beginning on January 30, 2022, the standard minimum wage for federal government contractors will be at least \$15 per hour; and beginning on January 1, 2023, the Secretary of Labor (Secretary) will determine the minimum wage on an annual basis, which will be published 90 days before that new minimum wage is to take effect.
- Beginning on January 30, 2022, the minimum wage for tipped federal government contract workers will be at least \$10.50 per hour; beginning on January 1, 2023, it will be 85% of the standard minimum wage set at that time; and beginning on January 1, 2024, it will be 100% of the standard minimum wage set at that time. If workers do not receive a “sufficient” additional amount from tips when combined with the hourly cash wage paid by the employer to equal the standard minimum wage, the cash wage paid by the employer must make up the difference. See Section 3(b). Under the Service Contract Act, or any other application law or regulation, if the wage required to be paid is higher than the standard minimum wage, the employer must pay additional cash wages sufficient to meet the highest wage required to be paid.
- This Order applies to any new contract, contract-like instrument, solicitation, and renewals and options exercised for an existing contract or contract-like instrument governed by the Fair Labor Standards Act, Service Contract Act, and Davis Bacon Act. This Order does not apply to grants, or any contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act. Further, solicitations issued *before* the effective date of the regulations that the Secretary will issue as well as contracts resulting from those



solicitations entered within 60 days of the effective date do not require, but are strongly encouraged, to implement these new minimum wage standards. However, if that contract is later extended or renewed or an option is later exercised, these new minimum wage standards will apply.

- The Secretary will issue new regulations to implement these new minimum wage requirements by November 24, 2021. Within 60 days after the issuance of those regulations, the Federal Acquisition Regulatory Council will amend the Federal Acquisition Regulations so that this requirement may be included in solicitations, contracts, and contract-like instruments.

CONCLUSION

King & Spalding will be monitoring the implementation of the Executive Order and how best federal contractors can prepare for its implementation. At the outset, the firm will be monitoring how the Secretary will apply these new minimum wage requirements when recalculating wage rates for various job types throughout multiple geographic locations as well as whether the regulations pursuant to this Executive Order will address how to delineate between an employee's work performed for government and non-government services and that effect on wage rates.

The Executive Order may be accessed [here](#).



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¹ This Executive Order revokes President Trump's May 25, 2018, Executive Order 13838 that provided an exemption to President Obama's February 12, 2014, Executive Order 13658. President Obama's Executive Order 13658 established a minimum wage to parties that contract with the federal government and applies to outfitters and guides operating on federal lands. President Trump's Executive Order 13838 exempted from the federal minimum wage requirement contracts or contract-like instruments with the federal government related to seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands.