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Frequently Asked Questions

Executive Order Raising Minimum Wage for Federal Contractor Employees

Q: What happened?

A: On February 12, 2014, President Obama signed an Executive Order increasing the minimum wage for employees of federal contractors to \$10.10. In doing so, President Obama fulfilled a promise made during his most recent State of the Union Address.

Q: Who is impacted by the Executive Order?

A: This is not yet clear. President Obama's Order requires the Secretary of Labor to issue new regulations implementing the Executive Order by October 14, 2014. The Secretary of Labor's regulations will provide detail on the definition of "federal contractor" and whether it is consistent in threshold and scope with the use of that term under other Executive Orders and laws, such as Executive Order 11246, which imposes affirmative action obligations on "federal contractors."

For instance, the extent to which the \$10.10 minimum wage requirement will apply to "federal subcontractors" who provide goods or services to federal contractors is still unclear. The Executive Order requires the new minimum wage be paid "to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of the contract or any subcontract thereunder" While this language appears to impose the new minimum wage requirement on federal subcontractors, the language is not explicit.

In addition, while ultimately leaving to the Secretary to define the term "contract," the Executive Order sets out the types of contracts to be covered by the new regulations, including:

- (A) procurement contract for services or construction;
- (B) a contract or contract-like instrument for services covered by the Service Contract Act;
- (C) a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or
- (D) a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to

offering services for Federal employees, their dependents, or the general public;

Until the Secretary issues the implementing regulations, there is no additional guidance on what each of these categories means or encompasses.

Q: Will the new minimum wage requirement apply to all employees of a federal contractor or only those employees who perform work on the qualifying government contract?

A: Again, this is not yet clear. While this language of the Executive Order seems to indicate the new minimum wage requirement will only apply to employees who perform work on the federal contract, the language is not explicit. We will likely have to wait until the Secretary of Labor issues the implementing regulations to get a better sense of which employees are covered by the new requirement.

There is precedent for government wage requirements to be determined on a contract basis, such as under prevailing wage laws impacting the construction industry. However, the Department of Labor typically argues for expansive worker protection and coverage, so the DOL may seek in upcoming proposed regulations to apply the new minimum wage to all employees of a federal contractor.

Q: When are the new minimum wage requirements effective?

A: The Executive Order applies to new or modified contracts executed after January 1, 2015.

Q: So, what should I be doing now?

A: Nothing. Details on how the new minimum wage requirement will apply should be forthcoming with the Secretary of Labor's implementing regulations, which the Executive Order directs the DOL to finalize and issue by October 14, 2014. Before that happens, the Secretary must issue proposed regulations and solicit public comment on the proposed rules. Jackson Lewis will continue to seek out additional information on the new Executive Order and will monitor developments.