

COMPLIANCE OVERVIEW

Provided by The Insurance Exchange

Minimum Wage Rate for Federal Contractor Employees

On Oct. 7, 2014, the U.S. Department of Labor (DOL) issued a new [final rule](#) to increase the minimum wage rate for certain federal contract workers. The final rule is the DOL's implementation of [Executive Order 13658](#), issued on Feb. 12, 2014, mandating an increase in the minimum wage rate for federal contractors.

The final rule authorizes the DOL to make annual adjustments to this minimum wage rate. New rates become effective on January 1. The minimum wage rate for federal contractor workers for 2017 is **\$10.20** per hour. This rate will [increase](#) to **\$10.35** per hour on **Jan. 1, 2018**. However, employees who are entitled to a higher wage rate under other federal or state laws must receive the highest of the wages available to them.

LINKS AND RESOURCES

- Required minimum wage [poster](#)
- DOL [fact sheet](#) on minimum wage for federal contractors
- DOL [FAQs](#) on minimum wage for federal contractors

HIGHLIGHTS

2017 MINIMUM WAGE RATE

- Federal contractor employees: \$10.20 per hour (\$10.35 for 2018)
- Federal contractor tipped employees: \$6.80 per hour (\$7.25 for 2018)

AFFECTED CONTRACTS AND EMPLOYEES

- New contracts and contract-like instruments that are above specified monetary values.
- Workers who perform on or in connection with covered federal contracts and whose wages are governed by the Fair Labor Standards Act (FLSA), the SCA or the DBA

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

AFFECTED CONTRACTS

The minimum wage rate for federal contractor employees applies to **new** contracts and contract-like instruments that are above specified monetary values and belong to one of the four contract categories listed below. A **contract** or a **contract-like** instrument is “an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.” “Affected contracts” includes all agreements regardless of nomenclature, type or particular form, whether negotiated or advertised, verbal or in writing. Some examples include:

- Procurement actions
- Lease agreements
- Cooperative agreements
- Provider agreements
- Intergovernmental service agreements
- Service agreements
- Licenses
- Permits

A contract or contract-like instrument is “new” if it results from a solicitation issued or is awarded outside of the solicitation process **on or after Jan. 1, 2015**. This includes new contracts and replacements for expiring contracts.

MONETARY THRESHOLD

In addition to being “new,” contracts must also be above a specific monetary value. The value threshold varies depending on the law that regulates the contract, as shown below.

Contract	Monetary Threshold
Prime contract covered by the Davis-Bacon Act	More than \$2,000
Prime contract covered by the Service Contract Act	More than \$2,500
Procurement contract where worker wages are regulated by the FLSA	More than \$3,000
Subcontracts awarded by any of the prime contracts mentioned above	No threshold

CONTRACT CATEGORIES

Affected contracts must also fall into one of the following four categories:

- 1. Procurement contracts for construction covered by the Davis-Bacon Act (DBA).** This category includes any contract covered by the DBA and its implementing regulations.
- 2. Service contracts covered by the Service Contract Act (SCA).** This category includes procurement and non-procurement contracts exceeding \$2,500 that are subject to the SCA and its implementing regulations.
- 3. Concessions contracts.** The final rule defines a concessions contract as “a contract under which the federal government grants a right to use federal property, including land or facilities, for furnishing services.” This category extends concessions contracts excluded from the SCA by DOL regulations, including contracts to furnish food, lodging, automobile fuel, souvenirs, newspaper stands or recreational equipment, regardless of whether the services are of direct benefit to the government, its personnel or

the general public. Some examples of concessions contracts include contracts with the federal government to operate souvenir shops in national parks or fast food restaurants in federal buildings.

- 4. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents or the general public.** This category generally includes leases of federal property and licenses to use federal property to offer services. Some examples include a contractor who operates a childcare center, credit union, gift shop, barbershop or fitness center in a federal agency building to serve the federal government, its personnel or the general public.

EXCLUDED CONTRACTS

The following types of contracts from the minimum wage requirement:

- Contracts entered into due to solicitations issued prior to Jan. 1, 2015 (including automatically renewed contracts);
- Grants within the meaning of the Federal Grant and Cooperative Agreements Act;
- Contracts and agreements with, and grants to, American Indian tribes under the Indian Self-Determination and Education Assistance Act;
- Employment contracts for direct services to a federal agency by an individual;
- Contracts performed outside of the United States;
- Contracts for services, unless expressly covered by the final rule, that are exempted from coverage under the SCA or its implementing regulations (for example, contracts for electric light and power, water, steam and gas);
- Procurement contracts for construction that are not subject to the DBA (such as procurement contracts for construction under \$2,000); and
- Contracts for the manufacturing or furnishing of materials, supplies, articles or equipment to the federal government (such as those subject to the Walsh-Healey Public Contracts Act).

AFFECTED WORKERS

The minimum wage requirement applies to workers who perform on or in connection with covered federal contracts and whose wages are governed by the Fair Labor Standards Act (FLSA), the SCA or the DBA. This includes:

- Employees who are entitled to the FLSA minimum wage, including FLSA-covered employees who provide support on contracts covered by the SCA and the DBA but who are not “service employees” under the contract (support must be necessary to satisfy contract requirements);
- Service employees who are entitled to prevailing wages under the SCA; and
- Laborers and mechanics who are entitled to prevailing wages under the DBA.

Workers who are exempt from the minimum wage provisions of the FLSA are exempt from these minimum wage requirements, unless they are otherwise covered by the DBA or the SCA. This exclusion applies (but is not limited) to: learners, apprentices, messengers, students, bona fide executive, administrative and professional employees and individuals who spend less than 20 percent of their workweeks performing in connection to affected contracts.

TIPPED EMPLOYEES

Specific rules apply to calculating the wages of tipped employees who work on or in connection with federal contracts. Effective **Jan. 1, 2017**, an affected tipped employee must receive a cash wage of at least **\$6.20 per hour** (\$7.25 per hour for 2018). This cash wage must be adjusted annually, by \$0.95 or the amount necessary to make the tipped employee's wage equal to 70 percent of the minimum wage rate (whichever is lower).

Employers are expected to subsidize tipped employee wages if tips are insufficient to allow employees to earn at least the applicable minimum wage rate.

RECORDKEEPING

Employers must create and maintain payroll records for each affected employee, for at least **three years**. Payroll records must contain each worker's:

- Name, address and Social Security number;
- Occupation or classification;
- Wage rate;
- Daily and weekly number of hours worked;
- Wage deductions; and
- Total wages received.

ADDITIONAL CONTRACTOR OBLIGATIONS

In addition to the obligations mentioned above, there are several related requirements and obligations for federal contractors. These obligations include:

- Paying the applicable minimum wage rate to all employees for all hours they work on covered contracts;
- Including a clause implementing the final rule in any affected new contract and lower-tier subcontract;
- Notifying workers who perform on or in connection with a covered contract of their rights under the final rule;
- Abstaining from taking kickbacks from wages paid to workers on covered contracts;
- Refraining from retaliating against any worker who exercises his or her rights under the final rule;
- Withholding funds for any contractor or subcontractor who fails to comply with the terms of the final rule; and
- Reporting to the Wage and Hour Division (WHD) any complaints and alleged violations of the final rule.

ENFORCEMENT

The final rule also presents enforcement mechanisms to protect the rights of workers to receive the appropriate minimum wage rate. The enforcement process is similar to the process that currently exists for the SCA and the DBA. Remedies under the rule include payment of **back wages**, **reinstatement** and **debarment**, as appropriate.

Any individual wishing to report a violation of these rules can file a verbal or written complaint with the DOL. The complaint will be handled with confidentiality in order to protect the identity of the individual who submitted it.

The DOL may initiate an investigation and may try to solve the issue through conciliation. If conciliation fails, the DOL may pursue enforcement through already established formal procedures.