

TYPES NOT MAPPED YET April 07, 2025 | TTR not mapped yet | Camille L. Chambers, Jayna Marie Rust

# Compliance Considerations for Government Contractors After Rescission of Biden Minimum-Wage Order

President Trump issued the [Executive Order](#) “Additional Recissions of Harmful Executive Orders and Actions” on March 14, 2025, rescinding President Biden’s Executive Order that increased the minimum wage for federal contractors, among 17 other executive actions. President Trump’s Executive Order did not provide a statement specifying how the executive branch should rescind President Biden’s minimum-wage EO. This article addresses the anticipated next steps that contracting agencies will take in rescinding it and that contractors may need to consider.

### **Brief History**

On February 12, 2014, President Obama issued [Executive Order 13658](#) to establish an additional minimum-wage requirement for federal contractors and subcontractors performing certain federal government contracts. Contracts in which the wages of the workers are covered by the Fair Labor Standards Act (“FLSA”), the Service Contract Act (“SCA”) and the Davis-Bacon Act (“DBA”), among other contracts, are covered by the Obama minimum-wage EO.

The Department of Labor (“DOL”) implemented the Obama minimum-wage EO by issuing regulations: (i) to establish the minimum-wage requirement of \$10.10 an hour that began January 1, 2015, (ii) to annually increase the minimum wage by an amount determined by the DOL’s Secretary, and (iii) to oversee and enforce contractors’ compliance. Similarly, the Federal Acquisition Regulation (“FAR”), which governs the federal procurement process, was amended and updated to incorporate the Obama minimum-wage EO and require agencies to include FAR 52.222-55 into new solicitations and contracts. FAR 52.222-55 requires federal contractors and subcontractors to pay the established hourly minimum wage as established by DOL under the Obama order.

On April 27, 2021, President Biden issued [Executive Order 14026](#) to increase the minimum-wage requirement established by the Obama minimum-wage EO to at least \$15 an hour on covered government contracts. The Biden minimum-wage EO also expressly superseded the Obama minimum-wage EO and ordered DOL to amend its regulations to implement the higher minimum hourly rate. FAR 52.222-55 was also updated to reference the Biden minimum-wage EO and the higher hourly minimum-wage rate.

On January 1, 2025, the required minimum wage for federal contractors covered by the Biden minimum-wage EO increased to \$17.75, and the required minimum wage for federal contractors covered by the Obama minimum-wage EO increased to \$13.30.

### **Impacts on Federal Contractors and Subcontractors**

President Trump’s rescission of the Biden minimum-wage EO means that, absent another executive order establishing a requirement for federal contractors, a federal minimum-wage requirement for government contracts will no longer be added into solicitations or contracts. As a reminder, Trump’s Executive Order does not impact federal government contractors’ obligations under federal, state, and local minimum-wage laws.

### **Contractors Must Still Comply With Clauses in Existing Contracts**

Although Trump’s Executive Order is effective immediately, it is unclear as to how the rescission of Biden’s minimum-wage EO will be implemented by DOL and federal executive agencies. Government contractors with contracts incorporating FAR 52.222-55 and Biden’s minimum-wage EO must still comply with the obligations to pay employees the mandated minimum wages until those contracts are otherwise amended or modified by the contracting officer.

DOL has issued [guidance](#) on its website, stating that DOL will no longer enforce Biden's minimum-wage EO or the implementing regulation at 29 CFR Part 23 and will take steps to rescind the regulation. It is possible that DOL will also do the same for Obama's minimum-wage EO. Either way, government contractors who have FAR 52.222-55 in their contracts and are looking to pay less than the referenced minimum wages must receive a written modification from a government official with contracting authority (the contracting officer) to avoid future liability for noncompliance, as the contracting agencies could still enforce this obligation even if DOL does not take enforcement action. <sup>[1]</sup> Additionally, under certain state laws, contractor employees may have a right of action against a contractor that fails to pay wages mandated by contract. In short, others may rely on the contract clause to require payment of the minimum wage, even if DOL does not.

### **Federal, State, and Local Minimum-Wage Laws are Still Required**

Government contractors should remember that the lack of a federal minimum-wage requirement for government contractors does not mean there are no minimum-wage requirements at all. All businesses, including government contractors, are required to comply with applicable federal, state, and local minimum-wage requirements, including the Fair Labor Standards Act. Although the federal minimum wage for all businesses is \$7.25 an hour (there is a separate minimum wage and calculation for tipped workers), many state and local governments have minimum-wage requirements higher than the federal minimum wage. Recently, many states raised their minimum-wage requirements, which have met or surpassed the initial \$15-an-hour minimum wage implemented by the now-revoked Biden minimum-wage EO.

For government contracts covered by the SCA and/or the DBA, government contractors and covered subcontractors are required to pay the required wages and fringe benefits under the applicable wage determination. When there are conflicting minimum-wage requirements, companies must comply with the *highest* minimum-wage requirement that applies to them. However, government contractors should note that generally they cannot recover costs due to increases in state or local minimum wages under the SCA, unless there is a collective bargaining agreement requiring the payment of state or local minimum wages.

### **Considerations for Contractors and Subcontractors**

As covered contractors and subcontractors consider how to address the upcoming change in DOL regulations and potential contract modifications, they have numerous factors to consider.

Although contractors, like other employers, can typically reduce an employee's pay, they must pay attention to state and local laws before doing so. Many states and local jurisdictions require advance notice before reducing pay. In addition, some employment contracts may not permit an employer to reduce an employee's pay. As such, government contractors, before reducing pay, should consult their legal team or advisors to ensure that a reduction in pay does not violate the law or put their government contracts at risk of noncompliance.

Additionally, government contractors, particularly those who have employees in jurisdictions that have recently had, or are considering, minimum-wage increases, should be aware of the change in minimum-wage requirements when developing costs for future proposals and determining labor rates.

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<sup>[1]</sup> Contracting agencies may have a number of performance-based reasons that they would seek to enforce the Biden-era minimum-wage requirement, including if (i) the contractor would receive an undue (or prohibited) profit for retaining the difference in wages; (ii) the contractor faces employee strikes or other disruptions due to decreased wages; or (iii) the contractor begins facing higher attrition due to decreased wages.

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