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## DEPARTMENT OF LABOR ISSUES PROPOSED RULE RAISING MINIMUM WAGE TO \$10.10 FOR FEDERAL CONTRACTOR EMPLOYEES

By Kenneth A. Rosenberg

Following through on President Barack Obama's initiative to increase the minimum wage for employees employed by federal contractors, the United States Department of Labor (DOL) issued a proposed rule that implements Executive Order (EO) 13658. The DOL's implementation of the order will affect "hundreds of thousands of people working under contracts with the federal government to provide services or construction who are currently making less than \$10.10 an hour." Fact Sheet, The White House, Opportunity for All: Rewarding Hard Work, (Feb. 12, 2014).

President Obama issued EO 13658 to increase the minimum wage that federal contractors and subcontractors have to pay their employees to \$10.10 per hour commencing January 1, 2015. Establishing a minimum wage for federal contractors, 79 Fed. Reg. 34 § 2(i) (proposed June 12, 2014) (to be codified 29 C.F.R. pt. 10). Additionally, beginning January 1, 2016, the EO requires that the Secretary of Labor annually increase the minimum wage amount "by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers." 79 Fed. Reg. 34 § 2(a)(ii)(A)-(B).

The EO covers the following federal government contracts:

1. Procurement contracts for construction covered by the Davis Bacon Act;
2. Service contracts covered by the Service Contract Act;
3. Concessions contracts, including any concessions contract covered by the department's regulations at 29 CFR 4.133(b); and
4. "Contracts in connection with federal property or lands and related to offering services for Federal employees, their dependents, or the general public. 29 C.F.R. pt. 10 (proposed June 12, 2014).<sup>1</sup>

Further, the proposed rule establishes standards ensuring that both tipped workers and disabled persons earn at least \$10.10 per hour. 79 Fed. Reg. 34 § 3. For example, if a worker does "not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to [\$10.10]" the employer must increase the cash wage of the workers until the wages equal the \$10.10 minimum wage. 79 Fed. Reg. 34 § 3(b).

Finally, the proposed rule specifies standards and procedures related to complaint intake, investigations, remedies and administrative enforcement proceedings. 29 C.F.R. pt. 10 (proposed June 12, 2014). As such, proposed section 10.41(a) allows a worker to file a complaint with any office of the DOL's Wage and Hour Division. 29 C.F.R. § 10.41 (proposed June 12, 2014). The applicable remedies and sanctions will derive from the Fair Labor Standards Act's (FLSA) anti-retaliation provisions and include reinstatement, promotion and the payment of unpaid wages. 29 C.F.R. § 10.44 (proposed June 12, 2014).

Since the final regulation implementing EO 13658 will potentially cover hundreds of thousands of workers employed by federal contractors, employers should carefully monitor this issue for future developments and be

prepared to comply with same by the end of this year. Where federal contractors have any questions about the potential implications of EO 13658 or its implementing regulations, they should consult with experienced counsel for guidance.

For more information regarding this Alert, please contact Kenneth A. Rosenberg at 973.994.7510 or [krosenberg@foxrothschild.com](mailto:krosenberg@foxrothschild.com), or any member of Fox Rothschild's Labor and Employment Department.

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<sup>1</sup>The order only covers "prime contracts covered by the DBA that exceed \$2,000 and prime contracts covered by the SCA that exceed \$2,500. June 2014 Fact Sheet. "For procurement contracts where workers' wages are governed by the FLSA," the order only covers contracts over \$3,000. Id.



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