

## **Fact Sheet #39J – MINIMUM WAGES FOR WORKERS WITH DISABILITIES UNDER EXECUTIVE ORDERS 13658 AND 14026**

On February 12, 2014, President Obama signed Executive Order 13658 and, on April 27, 2021, President Biden signed Executive Order 14026, which raise the hourly minimum wage for certain Federal contractors. Both Executive Orders establish minimum wages to be paid to workers performing on or in connection with a covered contract with the Federal Government. Workers covered by the Executive Orders and due the full applicable Executive Order minimum wage include workers with disabilities whose wages are calculated pursuant to certificates issued under section 14(c) of the Fair Labor Standards Act (FLSA).

An overview of the general provisions of the Executive Orders, including coverage requirements, can be found at:

- [Fact Sheet #83A](#): Establishing a Minimum Wage for Contractors under Executive Order 13658, and
- [Fact Sheet #83B](#): Raising the Minimum Wage for Contractors under Executive Order 14026.

[Fact Sheet #39](#) provides an overview of the general provisions of FLSA section 14(c).

Note: The section 511 requirements of the Rehabilitation Act that limit the payment of subminimum wages do not apply to employees only receiving commensurate wages paid under a federal service contract or on an Executive Order covered contract when those wages are above the FLSA federal minimum wage. For more information about section 14(c) and section 511, please see [Field Assistance Bulletin No. 2019-1](#).

### **What wage rates must be paid to workers performing on or in connection with contracts subject to the Executive Orders?**

If a covered federal contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022, Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour for all hours spent performing on or in connection with that contract, beginning January 30, 2022.

If a covered federal contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022, Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour for all hours spent performing on or in connection with that contract, beginning January 1, 2022.

The minimum wage rates under both of the Executive Orders may be increased annually, each January, to an amount determined by the Secretary of Labor based on inflation.

## **What contracts are covered by the Executive Orders?**

The Executive Orders establish minimum wage requirements that apply to all contracts for construction covered by the Davis-Bacon Act (DBA)<sup>1</sup>; contracts for services covered by the Service Contract Act (SCA); concessions contracts, including concessions contracts excluded from SCA coverage; and contracts 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.

## **Do the Executive Orders apply to AbilityOne contracts?**

AbilityOne contracts are subject to Executive Orders in the same manner as other covered contracts. *See* GCE EO portal for information about contract coverage under Executive Orders.

## **May employers continue to pay commensurate wages to workers with disabilities, as permitted by section 14(c), who are employed on or in connection with contracts covered by the Executive Orders?**

Yes, but only if the commensurate wage rate is higher than the applicable Executive Order minimum wage. A commensurate wage rate may still be calculated under section 14(c) for a worker employed on or in connection with an Executive Order covered contract. If the commensurate wage rate, whether hourly or piece rate, is less than the applicable Executive Order minimum wage, the contractor must pay the higher Executive Order minimum wage rate. If the commensurate wage due on an Executive Order covered contract is higher than the applicable Executive Order minimum wage, however, the contractor must pay the worker the higher commensurate wage as required by the FLSA. In all instances, the contractor must pay workers performing work on or in connection with a covered contract, including workers with disabilities, full fringe benefits required by the contract.

Examples:

- ❖ On an SCA covered contract subject to Executive Order 13658, the SCA prevailing wage rate for a janitor employed on the contract is \$14.00 per hour. A worker with a disability is determined to complete the job at 50% productivity through the process defined by section 14(c), resulting in a commensurate wage rate of \$7.00 per hour. The employee is due the higher current Executive Order 13658 minimum wage rate (*i.e.*, \$10.95 per hour in calendar year 2021, \$11.25 per hour beginning January 1, 2022, and an amount determined annually thereafter by the Secretary of Labor).
- ❖ On an SCA covered contract subject to Executive Order 14026, the SCA prevailing wage rate for a window washer employed on a contract is \$30.00 per hour. A worker with a disability is determined to complete the job at 60% productivity through the process defined by section 14(c), resulting in a commensurate wage rate of \$18.00 per hour. The employee is due the section 14(c) commensurate rate of \$18.00 per hour because it is higher than the Executive Order 14026 minimum wage rate (*i.e.*, \$15.00 per hour beginning January 30, 2022, and an amount determined annually thereafter by the Secretary of Labor).

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<sup>1</sup> The DBA does not authorize the payment of subminimum wages to workers who have disabilities for the work being performed on DBA-covered contracts.

**Must an employer obtain a certificate from the Department of Labor prior to paying commensurate wages under section 14(c) to workers with disabilities performing work on or in connection with Executive Order covered contracts?**

Yes. Employers who wish to pay commensurate wages under section 14(c) to workers employed on or in connection with Executive Order covered contracts must follow the same certification procedures as employers who perform work not covered by the Executive Orders. [See Fact Sheet #39A for information on how to obtain a certificate under section 14\(c\).](#)

Note: Employers can only pay a commensurate wage rate under section 14(c) to workers performing on or in connection with covered contracts if it is higher than the applicable Executive Order minimum wage.

**How would the Executive Orders apply to other staff employed by a section 14(c) certificate holder who has contracts covered by the Orders?**

Any staff whose wages are governed by the SCA or the FLSA, whether a worker with a disability employed under a section 14(c) certificate or other staff of the certificate holder, must be paid at least the Executive Order minimum wage for work performed on or in connection with a covered contract and full fringe benefits. The minimum wage protections of the Executive Orders apply to workers who directly perform the specific services called for by the contract's terms.

The minimum wage protections of the Executive Orders also apply to FLSA-covered employees who are performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific services called for by the contract itself if at least 20% of their hours worked in a given workweek are in support of a covered contract. For example, a job coach whose wages are governed by the FLSA who coaches workers employed under a section 14(c) certificate in performing work at a fast food franchise located on a military base would be entitled to the applicable Executive Order minimum wage rate for hours worked in support of the contract if at least 20% of the hours worked in a workweek are in support of a covered contract. Additionally, all time spent by a job coach or other employee completing the work specifically required by the contract must be paid at least the applicable Executive Order minimum wage rate and fringe benefits regardless of the percent of the hours worked in a workweek in support of a covered contract.

**What are the notice requirements under the Executive Orders?**

The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the applicable Executive Order, in addition to the notification requirements under section 14(c) and any other applicable laws or regulations. For service employees on contracts covered by the SCA and laborers and mechanics on contracts covered by the DBA, the contractor may meet the Executive Orders' notification requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the relevant poster provided by the Department ([Publications WH1089](#) or MW EO 14026 poster). Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the contractor and customarily used for notices to workers about terms and conditions of employment.

## **What happens if a certificate holder violates one of the Executive Orders?**

The Wage and Hour Division conducts investigations of contractors to ascertain compliance with the SCA and Executive Orders. The SCA and Executive Orders provide authority to withhold contract funds to reimburse underpaid employees, terminate the contract, hold the contractor liable for associated costs to the government, and debar the contractor from future government contracts for a period of three years.

## **Where to Obtain Additional Information**

For additional information: scan the QR code; visit our Wage and Hour Division section 14(c) website at <https://www.dol.gov/agencies/whd/workers-with-disabilities>; and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

For more information about the Executive Orders and implementing regulations, please visit [new EO portal].

For more information about the provisions of the SCA, including fact sheets, regulations, and other resources, please visit <https://www.dol.gov/agencies/whd/government-contracts/service-contracts>.

This publication is general information and is not to be considered in the same light as official statements of opposition contained in the regulations. Detailed information concerning section 14(c) can be found in the FLSA regulations, [29 CFR Part 525](#).

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