

FACT SHEET: RAISING THE MINIMUM WAGE FOR WORKERS WITH DISABILITIES UNDER EXECUTIVE ORDER 13658

On February 12, 2014, President Obama signed Executive Order 13658, “Establishing a Minimum Wage for Contractors.” This Order establishes a minimum wage to be paid to workers performing on or in connection with a covered contract with the Federal Government. Workers covered by this Executive Order and due the full 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).

Please see [Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors](#) for an overview of the general provisions of the final rule implementing the Executive Order, including coverage requirements, and [Fact Sheet #39, for an overview of the general provisions of FLSA section 14\(c\)](#).

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

Every covered worker performing work on or in connection with a covered contract must be paid no less than \$10.10 per hour beginning January 1, 2015. Beginning January 1, 2016, and annually thereafter, this amount may be increased to an amount determined by the Secretary of Labor based on inflation.

What contracts are covered by the Executive Order?

The Executive Order minimum wage requirement applies to all contracts for construction covered by the Davis-Bacon Act (DBA)¹; contracts for services covered by the Service Contract Act (SCA); concessions contracts, such as contracts to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment on Federal property; and contracts to provide services, such as child care or dry cleaning, in Federal buildings for Federal employees or the general public.

Only new contracts and replacements for expiring contracts described above that result from solicitations issued on or after January 1, 2015 or contracts that are awarded outside the solicitation process on or after January 1, 2015 are subject to the Executive Order.

Does the Executive Order apply to AbilityOne contracts?

AbilityOne contracts are subject to the Executive Order in the same manner as other covered contracts. For example, if an AbilityOne service contract was awarded on January 1, 2011 and provided for a five-year contract term, a decision by the contracting parties to renew the contract on January 1, 2016 would qualify as a “new contract” subject to the Executive Order.

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 Executive Order covered contracts?

Yes, but only if the commensurate wage rate is higher than the Executive Order minimum wage. A commensurate wage rate may still be calculated under section 14(c) for a worker employed on or in

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

connection with an Executive Order covered contract. If the commensurate wage rate, whether hourly or piece rate, is less than the 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 Executive Order minimum wage, however, the contractor must pay the worker the higher commensurate wage as required by the FLSA.

Examples:

- The SCA prevailing wage rate for a janitor employed on a contract covered by the SCA and Executive Order is \$14.00. If the worker with a disability is determined to complete the job at 50% productivity through the process defined by section 14(c), the commensurate wage rate would be \$7.00. The Executive Order, however, would raise the rate due to that employee to the current Executive Order minimum wage rate (i.e., \$10.10 per hour beginning January 1, 2015 and an amount determined annually thereafter by the Secretary of Labor).
- The SCA prevailing wage rate for a window washer employed on that same contract covered by the SCA and Executive Order is \$20.00. If the worker with a disability is determined to complete the job at 60% productivity through the process defined by section 14(c), the commensurate wage rate would be \$12.00. If this amount is higher than the applicable Executive Order minimum wage rate (i.e., \$10.10 per hour beginning January 1, 2015 and an amount determined annually thereafter by the Secretary of Labor), then the employee would be due the higher rate of \$12.00 per hour.

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 Order. [See Fact Sheet #39A for information on how to obtain a certificate under section 14\(c\).](#)

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

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 generally be paid at least the Executive Order minimum wage for work performed on or in connection with a covered contract. The Executive Order minimum wage protections apply to workers who directly perform the specific services called for by the contract's terms. The Executive Order minimum wage protections 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 Executive Order minimum wage rate for hours worked in support of the contract if at least 20% of his or her 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 Executive Order minimum wage rate regardless of the percent of his or her hours worked in a workweek in support of a covered contract.

What are the notice requirements under the Executive Order?

The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the 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 Order 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 poster provided by the Department ([Publication WH1089](#)). Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site 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 the Executive Order?

If the Wage and Hour Division determines that a contractor has violated the Executive Order, the Order provides authority to withhold contract funds to reimburse underpaid workers, terminate the contract, hold the contractor liable for associated costs to the government, and debar a contractor from future government contracts for a period of three years.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpful, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

For more information about Executive Order 13658 and its implementing regulations, please visit <http://www.dol.gov/whd/flsa/eo13658>.

For more information about the provisions of section 14(c), please visit http://www.dol.gov/whd/specialemloyment/workers_with_disabilities.htm. Detailed information concerning section 14(c) can be found in the FLSA regulations, [29 CFR Part 525](#).

For more information about the provisions of the SCA, including fact sheets, regulations, and other resources, please visit <http://www.dol.gov/whd/govcontracts/sca.htm>.

This publication is general information and is not to be considered in the same light as official statements of position contained in the regulations.

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