

Subpart 22.19 - Increasing the Minimum Wage for Contractors

Parent topic: [Part 22 - Application of Labor Laws to Government Acquisitions](#)

22.1900 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14026, Increasing the Minimum Wage for Federal Contractors, which requires minimum wages for certain *workers*; Department of Labor (DOL) implementing regulations are found at 29 CFR part 23. This E.O. superseded E.O. 13658; DOL implementing regulations for E.O. 13658 are found at 29 CFR part 10.

22.1901 Definitions.

As used in this subpart—

United States means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*).

Worker, (in accordance with 29 CFR 23.20)–

(1)

(i) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 14026, and

(A) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the *Service Contract* Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (*Construction*) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes *workers* performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(2)

(i) A *worker* performs on a contract if the *worker* directly performs the specific services called for by the contract; and

(ii) A *worker* performs *in connection with* a contract if the *worker's* work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

22.1902 Policy.

(a) Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to *workers* performing on, or in connection with, contracts and subcontracts subject to this subpart is—

(1) At least \$15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor. The *Administrator* of the Wage and Hour Division (the *Administrator*) will notify the public of the new E.O. minimum wage rate at least 90 days before it is to take effect. (See [22.1904.](#))

(b) Relationship with other wage rates.

(1) Nothing in this subpart *shall* excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance or any applicable contract establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(2) The E.O. minimum wage rate applies whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(c) Application to tipped *workers*. Policies and procedures in DOL regulations at 29 CFR 23.240(b) and 23.280 address the relationship between the E.O. minimum wage and wages of *workers* engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

22.1903 Applicability.

(a) This subpart applies to contracts covered by the *Service Contract* Labor Standards statute ([41 U.S.C. chapter 67](#), formerly known as the *Service Contract Act*, [subpart 22.10](#)), or the Wage Rate Requirements (*Construction*) statute ([40 U.S.C. chapter 31, Subchapter IV](#), formerly known as the Davis Bacon Act, [subpart 22.4](#)), that require performance in whole or in part within the *United States* (the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331, et seq.](#))). When performance is in part within and in part outside the *United States*, this subpart applies to the part of the contract that is performed within the *United States*.

(b)

(1) This subpart applies to *workers* as defined at 22.1901. As provided in that definition-

(i) *Workers* are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the *worker*;

(ii) *Workers* with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) *Workers* who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This subpart does not apply to-

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., i.e., those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the *Service Contract* Labor Standards statute or the Wage Rate Requirements (*Construction*) statute. These individuals include but are not limited to-

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a);

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b); and

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(c) *Agency Labor Advisors*, as defined at 22.001, are listed at <https://www.sam.gov>, and are available to provide guidance and assistance with the application of this subpart.

22.1904 Annual Executive Order Minimum Wage Rate.

(a) For the E.O. minimum wage rate that becomes effective on January 30, 2022, and annually thereafter, the *Administrator* will-

(1) Notify the public of the new E.O. minimum wage rate at least 90 days before it becomes effective by publishing a notice in the Federal Register;

(2) Publish and maintain on *Wage Determinations at SAM.gov*, <https://www.sam.gov>, or any successor site, the E.O. minimum wage rate; and

(3) Include a general notice on wage determinations which are issued under the *Service Contract* Labor Standards statute or the Wage Rate Requirements (*Construction*) statute. The notice will provide information on the E.O. minimum wage and how to obtain annual updates.

(b)

(1) The contractor *may* request a price adjustment only after the effective date of a new annual E.O. minimum wage determination published pursuant to paragraph (a). Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of the annual E.O. minimum wage, and for associated labor costs (including those for subcontractors). Associated labor costs *shall* include increases or decreases that result from changes in social security and unemployment taxes and *workers' compensation insurance*, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(2) The wage rate price adjustment under this clause is the lowest amount calculated by subtracting from the new E.O. wage rate the following: the current E.O. minimum wage rate; the current service or *construction* wage determination rate under the contract (if the wage rate is applicable to that *worker*); or the actual wage currently paid the *worker*. If the amount is zero or below, there will be no increase paid for this *worker*.

(i) Example 1 - New E.O. wage rate is \$16.10.

Previous E.O. wage rate is \$15.70.

The current service or *construction* wage determination rate applicable to this *worker* under the contract is \$15.75.

Analysis: The calculation is
 $\$16.10 - \$15.80 = \$.30$.
The price adjustment for this *worker* is \$.30.

The actual wage currently paid to the *worker* is \$15.80.

(ii) Example 2 - New E.O. wage rate is \$15.50.

Previous E.O. wage rate is \$15.10.

The current service or *construction* wage determination rate applicable to this *worker* under the contract is \$15.75.

Analysis: The calculation is
 $\$15.50 - \$15.80 = -\$.30$.
There is no price adjustment for this *worker*.

The actual wage currently paid to the *worker* is \$15.80.

(3) The *contracting officer shall* not adjust the contract price for any costs other than those identified in paragraph (b)(1) of this section, and *shall* not provide duplicate price adjustments with any price adjustment under clauses implementing the *Service Contract Labor Standards* statute or the *Wage Rate Requirements (Construction)* statute.

22.1905 Enforcement of Executive Order Minimum Wage Requirements.

(a) Authority.

(1) Section 5 of the E.O. grants the authority for investigating potential violations of, and obtaining

compliance with, the E.O. to the Secretary of Labor. The Secretary of Labor, in promulgating the implementing regulations required by Section 4 of the E.O., has assigned this authority to the *Administrator*. *Contracting* agencies do not have authority to conduct compliance investigations under 29 CFR part 10 or part 23 as implemented in this subpart. This does not limit the *contracting officer's* authority to otherwise enforce the terms and conditions of the contract.

(2) *Contracting officers shall* withhold payment at the direction of the *Administrator*.

(3) The *contracting officer shall* withhold payment, without a request from the *Administrator*, if the contractor fails to comply with the requirements in paragraph (e)(2) of [52.222-55](#), Minimum Wages for Contractor *Workers* Under Executive Order 14026 to furnish payroll records, until such time as the noncompliance is corrected.

(b) Complaints.

(1) Complaints *may* be filed with the *contracting officer* or the *Administrator* by any person, entity, or organization that believes a violation of this subpart has occurred.

(2) The identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, *shall* not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual, unless otherwise authorized by law.

(3) Upon receipt of a complaint, or if notified that the *Administrator* has received a complaint, the *contracting officer shall* report the following information, within 14 days, if available without conducting an investigation, to the Department of Labor, Wage and Hour Division, Office of Government Contracts, 200 Constitution Avenue N.W., Room S3006, Washington, D.C. 20210.

(i) The complaint or description of the alleged violation;

(ii) Available statements by the *worker*, contractor, or any other person regarding the alleged violation;

(iii) Evidence that clause [52.222-55](#), Minimum Wages for Contractor *Workers* Under Executive Order 14026, (or its predecessor for complaints under 29 CFR part 10) was included in the contract;

(iv) Information concerning known settlement negotiations between the parties, if applicable; and

(v) Any other relevant facts known to the *contracting officer* or other information requested by the Wage and Hour Division.

(c) Investigations. Complaints will be investigated by the *Administrator*, if warranted, in accordance with the procedures in 29 CFR part 23.430.

(d) Remedies and sanctions-

(1) Unpaid wages. When the *Administrator's* investigation reveals that a contractor has failed to pay the applicable E.O. minimum wage, the *Administrator* will notify the contractor and the *contracting* agency of the unpaid wage violation, and request that the contractor remedy the violation. If the contractor does not remedy the violation, the *Administrator may* direct withholding of payments due on the contract or any other contract between the contractor and the Federal Government. Upon

final decision and direction of the *Administrator*, the *contracting* agency *shall* transfer the withheld funds to the Department of Labor for disbursement in accordance with the procedures at [22.406-9\(c\)](#).

(2) *Antiretaliation*. When a contractor has been found to have violated paragraph (i) of clause [52.222-55](#), Minimum Wages for Contractor *Workers* Under Executive Order 14026, the *Administrator* may provide for relief to the *worker* in accordance with 29 CFR 23.440.

(3) *Debarment*.

(i) The Department of Labor *may* initiate *debarment* proceedings under 29 CFR 23.520 whenever a contractor is found to have disregarded its obligations under 29 CFR part 23.

(ii) *Contracting officers* *shall* consider notifying the agency suspending and debarring official in accordance with agency procedures when a contractor commits significant violations of contract terms and conditions related to this subpart.

(4) Retroactive inclusion of *contract clause*. If a *contracting* agency fails to include the *contract clause* in a contract to which E.O. 14026 applies, the *contracting* agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, *shall* incorporate the *contract clause* in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that *may* be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

22.1906 Contract clause.

Insert the clause at [52.222-55](#), Minimum Wages for Contractor *Workers* Under Executive Order 14026, in *solicitations* and contracts that include the clause at [52.222-6](#), *Construction Wage Rate Requirements*, or [52.222-41](#), *Service Contract Labor Standards*, where work is to be performed, in whole or in part, in the *United States*.