

Reclamation Manual

Policy/Directives and Standards

Attachment 2: Contract Clause

Minimum Wages for Contractor *Workers* Under Executive Order 14026 (Jan 2022)

(a) Definitions. As used in this clause—

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 –

(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; and

(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.

(b) Executive Order Minimum wage rate.

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(1) The Contractor *shall* pay to *workers*, while performing in the *United States*, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$15.00 per hour beginning January 30, 2022.

(2) The Contractor *shall* adjust the minimum wage paid, if necessary, beginning January 1, 2023, and annually thereafter, to meet the applicable annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on <https://www.sam.gov> (or any successor website), and a general notice on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (*Construction*) statute, that will provide information on the E.O. minimum wage and how to obtain annual updates. The applicable published E.O. minimum wage is incorporated by reference into this contract.

(3)

(i) The Contractor *may* request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only for increased labor costs (including subcontractor labor costs) as a result of an increase in 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.

(ii) Subcontractors *may* be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors *shall* consider any subcontractor requests for such price adjustment.

(iii) The *Contracting Officer* will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will 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.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause *may* not be longer than semi-monthly, but *may* be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. *Workers shall* be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor *shall* pay, unconditionally to each *worker*, all wages due free and clear without subsequent rebate or kickback. The Contractor *may* make deductions that reduce a *worker's* wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 23.230, Deductions.

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(7) The Contractor *shall* not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to *workers* whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause *shall* excuse the Contractor from compliance 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. 14026 minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor *shall* pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(10) The Contractor *shall* follow the policies and procedures in 29 CFR 23.240(b) and 23.280 for treatment of *workers* engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)

(1) This clause applies to *workers* as defined in paragraph (a). 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 clause 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);

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(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).

(d) Notice. The Contractor *shall* notify all *workers* performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to *workers* covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (*Construction*) statute, the Contractor *may* meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to *workers* whose wages are governed by the FLSA, the Contractor *shall* post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/agencies/whd/government-contracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to *workers* electronically *may* post the notice electronically provided the electronic posting is displayed prominently on any Web site that I maintained by the contractor, whether external or internal, and customarily used for notices to *workers* about terms and conditions of employment.

(e) Payroll Records.

(1) The Contractor *shall* make and maintain records, for three years after completion of the work, containing the following information for each *worker*:

(i) Name, address, and social security number;

(ii) The *worker's* occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each *worker*;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The Contractor *shall* make records pursuant to paragraph (e)(1) of this clause available for *inspection* and transcription by authorized representatives of the Administrator. The Contractor *shall* also make such records available upon request of the *Contracting Officer*.

(3) The Contractor *shall* make a copy of the contract available, as applicable, for *inspection* or transcription by authorized representatives of the Administrator.

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(4) Failure to comply with this paragraph (e) *shall* be a violation of 29 CFR 23.260 and this contract. Upon direction of the Administrator or upon the *Contracting Officer's* own action, payment *shall* be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (*Construction*) statute, the Fair Labor Standards Act, or any other applicable law.

(f) Access. The Contractor *shall* permit authorized representatives of the Administrator to conduct investigations, including interviewing *workers* at the worksite during normal working hours.

(g) Withholding. The *Contracting Officer*, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under this or any other Federal contract with the same Contractor, sufficient to pay *workers* the full amount of wages required by this clause.

(h) Disputes. Department of Labor has set forth in 29 CFR 23.510, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 23. Such disputes *shall* be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the *contracting* agency, the Department of Labor, or the *workers* or their representatives.

(i) Antiretaliation. The Contractor *shall* not discharge or in any other manner discriminate against any *worker* because such *worker* has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) Subcontractor compliance. The Contractor is responsible for subcontractor compliance with the requirements of this clause and *may* be held liable for unpaid wages due subcontractor *workers*.

(k) Subcontracts. The Contractor *shall* include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (*Construction*) statute, and are to be performed in whole or in part in the *United States*.

(End of clause)

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WORKER RIGHTS UNDER EXECUTIVE ORDER 14026

FEDERAL MINIMUM WAGE FOR CONTRACTORS

\$17.20 PER HOUR

EFFECTIVE JANUARY 1, 2024 – DECEMBER 31, 2024

The law requires certain federal contractors to display this poster where employees can easily see it.

MINIMUM WAGE Executive Order (EO) 14026 requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) \$15.00 per hour beginning January 30, 2022, and (2) beginning January 1, 2023, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with EO 14026 and appropriate regulations. The EO 14026 minimum wage in effect from January 1, 2024 through December 31, 2024 is **\$17.20 per hour**.

TIP CREDIT Starting on January 1, 2024, contractors may not credit employee tips toward the EO 14026 minimum wage. Similar to other workers subject to EO 14026, tipped employees must be paid a cash wage of at least \$17.20 per hour, effective January 1, 2024, through December 31, 2024.



EXCLUSIONS

- The EO 14026 minimum wage may not apply to some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week.
- The EO 14026 minimum wage may not apply to certain other occupations and workers.

ENFORCEMENT The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing this law. WHD can answer questions about your workplace rights and protections, investigate employers and recover back wages. All WHD services are free and confidential. Employers cannot retaliate or discriminate against someone who files a complaint or participates in an investigation. WHD will accept a complaint in any language. You can find your nearest WHD office online at [dol.gov/agencies/whd/contact/local-offices](https://www.dol.gov/agencies/whd/contact/local-offices) or by calling toll-free 866-4US-WAGE (866-487-9243). We do not ask workers about their immigration status. **We can help.**


ADDITIONAL INFORMATION

- EO 14026 only applies to certain federal construction and service contracts that were renewed, extended, or entered into on or after January 30, 2022. Contracts that were awarded between January 1, 2015 and January 29, 2022, that were not renewed or extended on or after January 30, 2022, and some procurement contracts entered into on or between January 30, 2022 and March 30, 2022, may be subject to EO 13658, which provides a lower minimum wage requirement than EO 14026. More information about the differences between EO 14026 and EO 13658 is available at [dol.gov/agencies/whd/government-contracts/eo14026/side-by-side](https://www.dol.gov/agencies/whd/government-contracts/eo14026/side-by-side)
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must receive no less than the full minimum wage rate under EO 14026 for time spent performing on or in connection with covered contracts.
- Some state or local laws may provide greater worker protections; employers must follow the law that requires the highest rate of pay.
- More information about the EO is available online at www.dol.gov/agencies/whd/government-contracts/eo14026



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
www.dol.gov/agencies/whd



WH001 REV 01/24