

Uncertainty for Federal Contractors: Circuits Split as Fifth Circuit Upholds Minimum Wage Mandate

By Justin R. Barnes, Brian E. Lewis & Laura A. Mitchell

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Meet the Authors



Justin R. Barnes

(He/Him)

Office Managing Principal
(404) 586-1809

Justin.Barnes@jacksonlewis.com

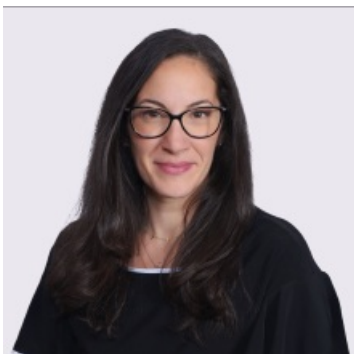


Brian E. Lewis

(He/Him)

Principal
617-367-0025

Brian.Lewis@jacksonlewis.com



Takeaways

- The Fifth Circuit has reversed a district court’s decision enjoining former President Biden’s Executive Order 14206 increasing the minimum hourly wage rate for employees working on federal contracts.
- The decision creates a circuit split with the Ninth Circuit, which found the president lacks authority to issue minimum wage mandates for federal contractors.
- The Trump Administration has signaled it will continue defending the executive order to preserve presidential authority to regulate federal contracting.

Related links

- [Federal Contractors in Flux: Ninth Circuit Finds President Biden Can’t Mandate Minimum Wage Under EO 14026](#)
- [Texas Federal Court Bars Enforcement of \\$15 Minimum Wage for Federal Contractors Against Three States](#)
- [Tenth Circuit Upholds Court’s Refusal to Enjoin Federal Contractor Minimum Wage Hike](#)

Article

The U.S. Court of Appeals for the Fifth Circuit has reversed a Texas federal court’s decision that invalidated President Joe Biden’s executive order increasing the hourly minimum wage for employees of federal contractors. The appeals court upheld the minimum wage mandate, concluding it was a valid exercise of presidential authority. The decision sets up a circuit split with the Ninth Circuit, which held that President Biden exceeded his authority under the Procurement Act when he issued the executive order. *State of Texas v. Trump*, 2025 U.S. App. LEXIS 2485 (Feb. 4, 2025).

Executive Order 14026

President Biden issued Executive Order (EO) 14026 in 2021. The EO increased to \$15 the minimum hourly wage for employees working on federal government contracts and provided for annual increases to the minimum wage. Currently, the minimum wage for contractors is \$17.75 per hour.

Fifth Circuit’s Decision

In one of several legal challenges to EO 14026, the states of Louisiana, Mississippi, and Texas filed suit in a Texas federal court. The plaintiffs argued that the president did not have authority under the Procurement Act to impose the wage mandate. They also claimed that the U.S. Department of Labor (DOL) regulations implementing the EO were arbitrary and capricious, in violation of the Administrative Procedures Act.

Laura A. Mitchell

(She/Her)

Principal

303-225-2382

Laura.Mitchell@jacksonlewis.com

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The district court struck down EO 14026. It determined that the Procurement Act did not give the president “broad policy-making authority to set the minimum wage of certain employees of federal contractors and subcontractors.” The court narrowly enjoined the wage mandate only as applied to the plaintiff state governments, explaining that it would not issue a nationwide injunction because it did not want to “encroach” upon other federal courts that had upheld the executive order. *State of Texas v. Biden*, 2023 U.S. Dist. LEXIS 171265 (Sept. 26, 2023).

The Fifth Circuit, however, reversed the lower court decision and upheld EO 14026. The appeals court found the president had statutory authority under the Procurement Act to issue the minimum wage mandate. “The President may prescribe policies or directives the President considers necessary to carry out the provisions under § 111 [of the Procurement Act], so long as such policies or directives do not conflict with those provisions,” the appeals court explained.

Given the limited nature of the injunction, its reversal does not have wide impact on employers (only the plaintiff state governments), but it does have broader implications for the challenges to the use of presidential authority by executive order in general.

Split of Authority

The Fifth Circuit’s decision creates a split with the Ninth Circuit, which held last November that the president lacked authority to issue EO 14026. *State of Nebraska v. Su*, 2024 U.S. App. LEXIS 28010 (Nov. 5, 2024).

The Ninth Circuit case involved a legal challenge to EO 14026 and its enabling regulations brought by another coalition of states. A federal district court in Arizona upheld the wage mandate and denied the plaintiffs’ motion for a preliminary injunction. The Ninth Circuit reversed the decision and vacated the district court’s order denying injunctive relief. The appeals court, however, did not invalidate EO 14026 or the DOL’s regulation. Instead, it sent the case back to the district court.

On remand from the Ninth Circuit, the district court is expected to issue a preliminary injunction barring application of the wage mandate, although it is not clear whether the injunction will apply to just the plaintiff states (to the extent of their relationships with the federal government as federal contractors) or as a complete ban to enforcement within the states.

Meanwhile, the DOL has filed a petition for *en banc* rehearing of the divided Ninth Circuit panel decision. While there was reason to believe the Trump Administration might choose to abandon the bid to reconsider a decision invalidating President Biden’s EO, the Department of Justice promptly submitted the Fifth Circuit’s decision upholding the EO as supplemental authority in support of its position that EO 14026 “falls within the President’s statutory power.”

In another case, the Tenth Circuit affirmed a lower court’s refusal to grant a preliminary injunction barring enforcement of the wage mandate. *Bradford v. United States DOL*, 2024 U.S. App. LEXIS 10382 (Apr. 30, 2024). The appeals court held the plaintiffs were not likely to show that the DOL lacked statutory authority to issue the DOL rule implementing EO 14026. Again, however, the appeals court did *not* issue a final decision on the merits. The plaintiffs filed a petition for certiorari at the U.S. Supreme Court asking the justices to address whether the wage mandate exceeds the president’s authority under the

Procurement Act and, if not, whether the statute improperly gives lawmaking authority to the president. On Jan. 13, 2025, the petition for certiorari was denied. In its letter to the Ninth Circuit, the DOJ also asked the appeals court to take note of the denial of certiorari.

Takeaways

For now, EO 14026 and its minimum wage mandate for federal contractors is in effect. A broader reprieve (through a variety of avenues) may be forthcoming. The Trump Administration is defending its predecessor's executive order and, more broadly, the president's statutory authority to regulate under the Procurement Act. President Trump may opt to issue his own executive order, however, to effectuate different policy decisions consistent with that authority.

If you have questions about the status of EO 14026 and its impact on your business, please contact one of our attorneys.

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