

Lawsuits Filed Challenging the DOL Dual Jobs Final Rule, \$15 Federal Contractor Minimum Wage

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Several recent lawsuits have been filed in federal court, one challenging the Dual Jobs Final Rule published by the Department of Labor (DOL) that became effective in late December 2021, and two others filed this week by several state attorneys general challenging President Biden's Executive Order requiring most federal contractors to pay a minimum wage of at least \$15 per hour to their employees.

The Dual Jobs [Final Rule](#) established limits on the amount of time tipped employees can spend performing work that is not "tip-producing" and still being paid at the reduced cash wage applicable to tipped employees under the Fair Labor Standards Act (FLSA). The new Final Rule revived the 20% (or "80/20") Rule, with modifications, and added a "30-Minute" Rule, disallowing the tip credit when a tipped employee spends more than thirty continuous minutes performing work that is not considered tip-producing work. The previous administration had attempted to eliminate the 20% Rule.

The lawsuit against the DOL was filed in a Texas federal court in December 2021, prior to the Final Rule's effective date, by the Restaurant Law Center (RLC). The RLC is an independent public policy organization affiliated with the National Restaurant Association, the largest foodservice trade association in the world. Through the lawsuit, the RLC seeks to enjoin the DOL from enforcing the Final Rule and to have the Rule invalidated, asserting that it conflicts with the language of the FLSA and that the DOL exceeded its authority in promulgating it. Oral argument on the RLC's motion for declaratory and injunctive relief was held on February 9, 2022.

Meanwhile, this week the attorneys general of Arizona, Idaho, Indiana, and Nebraska filed suit in federal court in Arizona, alleging that Executive Order (EO) 14026 is an improper attempt to get around Congress's rejection of the same minimum wage increase in a COVID-19 relief package. The next day, the attorneys general of Louisiana, Mississippi, and Texas filed a similar suit in a Texas federal court. At least one other lawsuit, by a Colorado river outfitter subject to EO 14026, has been filed challenging the Executive Order.

EO 14026, issued in April 2021 and effective January 30, 2022, raises the minimum wage for the affected federal contractors from \$10.95 an hour to \$15.00 an hour, with annual increases. The

current minimum wage was established under the Obama Administration. According to the lawsuits filed by the attorneys general, the Executive Order covers about 20% of the U.S. labor force and would make the cost of impacted contracts prohibitive.

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