

BUSINESS

Federal minimum wage will be rough waters for river outfitters, lawsuit says

Colorado river outfitters sue U.S. Department of Labor over \$15 minimum wage for contractors



A Colorado river-rafting business and a state trade association are suing the federal government over a federal minimum wage for federal contractors they say shouldn't apply to them.

By **JUDITH KOHLER** | jkohler@denverpost.com | The Denver Post
December 24, 2021 at 6:00 a.m.

A Colorado river-rafting business is suing the U.S. Department of Labor over a new minimum wage for federal contractors, saying the rule will boost costs and potentially make river trips unaffordable for many families.

[Arkansas Valley Adventures](#) along with the Colorado River Outfitters Association filed [the lawsuit](#) Dec. 7 in U.S. District Court in Denver. They are represented by the [Pacific Legal Foundation](#), a libertarian-leaning law firm.

Duke Bradford, who owns Arkansas Valley Adventures, said he and the outfitters' association decided to sue the federal government after asking for clarification of the new rule that will take effect Jan. 30. He said outfitters who have permits to operate on federal lands are considered federal contractors under the [executive order](#) signed by President Joe Biden in April.

Federal officials didn't respond to letters voicing concerns about the wage rule's impacts on the outdoor businesses, Bradford said. The outfitters say applying the minimum wage to their businesses will drive up costs for them and customers because rafting guides, typically paid a flat fee per trip, spend several days at a time on the job.

"I don't think anyone sets out, I certainly didn't, to sue the federal government and the Department of Labor and the current administration," Bradford said. "It's not an ideal way to go, but we were left with little options."

The Department of Labor referred questions about the lawsuit to the U.S. Justice Department, which will represent the agency. The Justice Department didn't respond to a request for comment Wednesday.



Lawyers for Bradford and the outfitters' association argue that the president doesn't have the authority to set minimum wages. In addition, Bradford and other business people who have permits to use federal lands are not federal contractors, said Caleb Kruckenberg, an attorney with the Pacific Legal Foundation.

"They actually pay the Forest Service or the (Bureau of Land Management) for the privilege of using federal land, and that's not government contracting," Kruckenberg said.

The Biden administration said raising the minimum wage to \$15 from \$10.95 will improve the economic security of workers and "narrow racial and gender disparities in income." The rule reverses the Trump administration's exemption of recreational services on federal lands from the minimum wage.

[Outdoor recreation](#) is an important part of Colorado's economy. It contributed a record \$12.2 billion to the state's gross domestic product in 2019 and \$9.6 billion in 2020.

Commercial rafting's economic impact in the state was \$184.9 million in 2019. The total dropped to \$148.7 million in 2020 because of a late start to the season and COVID-19 restrictions, according to a report by the [Colorado River Outfitters Association](#).

"Although the suit might initially be viewed as an antiguide pay increase action, it is not," the Colorado River Outfitters Association said in a statement to members about the decision to sue. "We maintain that in the long run, our employees will be adversely affected by this new rule."

In a letter to his employees, Bradford said the business fully supports fair wages for guides, but paying people by the hour rather than the trip would significantly increase operating costs for multiday outings.

"The concern for my clients is what happens when you apply an overtime rule 24 hours a day to a multiday trip," Kruckenberg said. "It's not just \$15 an hour, it's time and a half once you hit 40 hours, which is two days into the trip."

Bradford, who started his business in 1998 in Buena Vista, said he will have to



“If I had to pay a 24-hour pay period, that would drive costs through the roof,” Bradford said. “And then families can’t afford to do this and we’re in a situation where only the wealthy can afford to do this.

“I really don’t feel the federal government understands what we do and the ramifications of such a blanket policy,” he added.

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