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Colorado rafting company sues federal government over minimum-pay rule for guides

Arkansas Valley Adventure, outfitters say Biden, Department of Labor cannot force minimum pay for permitted operations

By Jason Blevins The Colorado Sun

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A raft hits the rapids in the Colorado River inside Glenwood Canyon on July 7, 2021, near Glenwood Springs. (Hugh Carey/The Colorado Sun)

Colorado's rafting industry, typically pretty sleepy this time of year, sparked to life this week after a longtime outfitter sued President Joe Biden and the Department of Labor over a new rule spiking the minimum wage for federal contractors to $15 an hour.

"This is not about minimum wage. We already pay our guides way above $15 an hour. What's really at stake here is the overnight rafting trip. We are just not going to be able to comply," said Duke Bradford, the owner of Arkansas Valley Adventure, who joined the Colorado River Outfitters Association in suing the federal government in Colorado's U.S. District Court over a rule that Bradford said would raise the cost of rafting across the country. "I want to offer trips that everyone can afford. If I jack up prices to pay these wages, it would be

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Some outfitters rallied to support Bradford and CROA, which represents 50 of the state's rafting companies. Some guides blasted Bradford, arguing he was fighting against increased pay for workers who serve as the backbone for that state's $150 million rafting industry.

"It's become harder and harder to make a living doing this," said 25-year guide Antony McCoy with Timberline Tours. "The only reason I've managed to make it is because our owner does pay us relatively well. But the majority of guides, they are paid very poor rates. But if everyone raises their pay and all companies raise their rates, then everyone would do better."

The Department of Labor, Wage & Hour Division's final rule, issued late last month following Biden's executive order in April, requires federal contractors to raise minimum wage to $15 an hour, up from $10.95. It also requires overtime of $22.50 an hour for work beyond 40 hours.

A similar executive order issued by President Barack Obama in 2014 required federal contractors, including outfitters, to raise wages for guides to $10.10 an hour, but that was only for new contracts. So ski resorts and other permit holders with long-term permits to operate on federal land did not need to follow the Obama order. (Plus there's a federal law on the books that specifically exempts ski resort employees from minimum mandatory wage rules, along with commercial fisherman, farm workers, small newspaper reporters, switchboard operators, baseball players, babysitters, criminal investigators and "computer systems analysts. Really.)

President Donald Trump in 2018 exempted raft guides – along with "seasonal recreational services," including hunting, fishing, skiing and climbing guides – from the mandatory minimum wage.

The Trump exemption argued that raising the minimum wage for guides "threatens to raise significantly the cost of guided hikes and tours on federal land, preventing many visitors from enjoying the great beauty of America's outdoors."

The new rule is set to go into effect at the end of January and outfitters have seen no indication that guides will again be exempted from the minimum wage requirement for federal contractors, Bradford said.

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A commercial raft guide, in the black helmet, leads guests down Browns Canyon on the Arkansas River in June 2021. (Jason Blevins/The Colorado Sun)

“It just didn’t seem like we were going to get an exemption, so we needed to do something,” said Bradford, a river guide who founded Arkansas Valley Adventures in 1998. “I don’t think we set out to sue the government, but we are desperate in the sense that this could really happen and a sizable portion of the rafting business, overnight trips, could just go away.”

The Department of Labor estimates the new rule will affect about 500,000 private companies, including 40,000 companies that provide concessions or recreational services on federal lands. The department said the rule would transfer about $1.7 billion a year from employers to employees.

Rafting companies who sent guides on overnight or multiday rafting trips could end up paying guides for more than 10 hours of overtime, outfitters said. Most guides are paid a flat rate for every day on the river and rafting is a tipping industry, with most guides collecting tips directly from guests.

Javier Placer is the co-owner of Adrift, which offers mostly overnight trips on the Green and Yampa rivers in northwest Colorado and Dinosaur National Monument. He’s already begun canceling raft trips he discounted for universities, schools, Boy Scouts and community groups.

“Those trips are over,” Placer says.

Placer has been a guide for many years. He pays his guides based on seniority, experience and certification. They all make, “way above” minimum wage, he said.

If a guide works a five-day trip and they are working from 6 a.m. to about 10 p.m, that’s eight hours at $15 and eight hours at $22.50. So

And he would not be able to let his guides work back-to-back trips.

“So we will be limiting the amount of trips these guides will be able to do. Guides like to lump up all the work into the shortest time possible. It’s not uncommon for guides to work 30, even 40 days in a row,” Placer says. “But they are doing what they love, sharing these transformative experiences with people in the wilderness. And then in the fall and winter, they take off and do their own thing. It’s been this way for years and it’s fair. ”

Placer says he’d like to see a closer study of how the new wage rule might impact the tens of thousands of outfitters in the country.

“I think the points raised by AVA and CROA are spot-on,” he says.

The Department of Labor, when it adjusted the minimum wage rule to allow for Trump’s exemption of guides, said lowering the cost of business for outfitters “could also incentivize outfitters to hire more guides and to increase the hours of current employees.”

A raft powers through the rapids in the Colorado River inside Glenwood Canyon on July 7, 2021, near Glenwood Springs. (Hugh Carey/The Colorado Sun)

“What all this translates into is more affordable guided tours and recreational services for visitors to Federal lands,” said the department’s 2018 update to the minimum wage rule reflecting the exemption of guides.

Another concern for the rafting industry, Bradford says, is that the new rule considers rafting companies as federal contractors instead of permit holders working under special use permits with federal land managers like the Forest Service, National Park Service and Bureau of Land Management.

“Outfitters and guides on federal lands are not federal contractors,” the lawsuit reads. “Yet President Biden, acting through the U.S. Department of Labor, has now ordered them to be lumped in with federal contractors, and adopt a wage model that is fundamentally incompatible with the way that the guiding industry operates.”

to federal landlords. The mandatory minimum wage rule upends how permittees pay employees and ultimately how it will generate revenue to pay federal land managers. Permits are typically renegotiated, not changed by executive order, says David Costlow, a former rafting outfitter and the executive director of CROA.

"We think the White House, through the Department of Labor, does not have the legal authority to do this," Costlow said. "We think it should be done democratically, not bureaucratically. This needs to go through the House and then the Senate and then sent to the White House."

Costlow said many of his members expect they will raise the cost of a rafting trip as much as 2.5 times if this rule remains in effect for outfitters. The Colorado rafting industry endured a $36 million decline in rafter spending in 2020 during the pandemic, hosting 112,000 fewer rafters than 2019. The economic impact of rafting in Colorado was $148.7 million in 2020, down from $184.9 million in 2019. The economics of rafting is an up-and-down affair, with river tourism impacted by fire, drought and, last year, a pandemic.

The lawsuit, Costlow says, is an attempt by the industry to inject a bit of "stability and predictability" into the business of ferrying guests down rivers.

"Hopefully the lawsuit ends with a judge saying CROA, you are right and this is illegal under the Department of Labor. And that will finally protect us from executive orders like this," Costlow says. "We think this should be run through Congress. If it's such a burning issue, why hasn't Congress done anything with it? If Congress doesn't do anything with it, why should a bureaucrat?"

The lawsuit has rallied guides hoping to see better pay from outfitters.

Maybe it's time to reform an industry that works guides for 10 hours a day and relies on a big tip to make them whole, said Charlie Ebel, a longtime river guide in Colorado.

"I think rafting on the Ark River is too cheap," Ebel says. "I think the outfitters have done a poor job of really reflecting the value of an Arkansas River trip."

Adding fuel to the backlash from guides was Bradford and CROA's choice of legal representation. The lawsuit was filed by the libertarian Pacific Legal Foundation, which advocates for property rights and often seeks to roll back government regulation. The foundation's lawyers have filed lawsuits challenging the Endangered Species Act and the Clean Water Act. The foundation says it has "an unmatched track record at the Supreme Court," winning 14 of 16 cases it has argued.

"Colorado Rafting Business Hire Right-Wing Law Firm to Keep Guide Pay Low." That's a headline from the Adventure Journal last week.

"Rafting company owners are teaming up with the people who actively destroy river ecosystems to deny their working class, highly skilled, and certified guides a living wage," tweeted an environmental attorney and raft guide.

"Yeah, I'm taking some heat for that attorney group," Bradford says. "But that doesn't change the issue. This is not about who is representing us. Let's not muddy the water because you don't like the representation we had to align with to get this issue under some light."

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