

https://www.coloradopolitics.com/courts/colorado-judge-hears-request-to-block-bidens-wage-rule-for-outdoor-recreation-workers/article_6ce1edac-6f32-11ec-bc7c-9fdb4c74faa7.html

Colorado judge hears request to block Biden's wage rule for outdoor recreation workers

By MICHAEL KARLIK michael.karlik@coloradopolitics.com

Jan 7, 2022



Rafters on the Colorado River in Glenwood Canyon.

(Photo by Adventure_Photo, iStock)

A federal judge in Colorado will decide whether President Joe Biden exceeded his authority by requiring outdoor recreation companies that operate on federal land to pay their workers a minimum wage of \$15 per hour plus overtime.

Duke Bradford, owner of Arkansas Valley Adventures, and the Colorado River Outfitters Association are asking U.S. District Court Chief Judge Philip A. Brimmer to block enforcement of an April 2021 executive order that establishes a \$15 minimum wage for federal contractors. The new requirements

take effect on Jan. 30.

At a hearing on Thursday in downtown Denver, the plaintiffs argued they were not contractors for the government, having merely obtained permits from federal agencies to provide outdoor recreation activities on public land. Biden's executive order repealed one issued three years prior from President Donald Trump, which deemed seasonal river guides exempt from higher minimum wage requirements in order to keep outdoor recreation affordable to the public.

"There's no explanation from President Biden about why the exception should go away," said Caleb J. Kruckenberg, representing the plaintiffs. The fact that they had permits with the federal government "can't be the reason why the president, acting through the Department of Labor, can set wage conditions on my client."

However, Brimmer appeared hesitant to say that Biden operated outside of federal law by simply disagreeing with the prior administration's logic that a rise in the minimum wage for outfitters was economically unwise for the government.

"Obviously President Trump came to that conclusion and there probably are good reasons that he came to that conclusion," Brimmer said. "But if President Biden came to a different conclusion and he provided an explanation ... why do you — why can I — second guess that conclusion without intruding upon a decision that is to be made, pursuant to statute, by the president?"

The outdoor recreation industry adds almost \$10 billion to Colorado's economy and employs 119,000 people, according to the U.S. Bureau of Economic Analysis. Bradford, who opened Arkansas Valley Adventures in 1998, has roughly 15 year-round employees and at least 250 seasonal ones.

The busy season for river rafting typically stretches from mid-May through Labor Day, and trips can last up to three days and two nights for Bradford's guides and customers. Instead of an hourly wage, Bradford negotiates trip salary, with a three-day excursion paying between \$400 and \$500 to the guide.

If the minimum wage order applied to his company, Bradford testified, "costs would go up and revenue would go down."

Originally, President Barack Obama used an executive order to establish a minimum hourly wage of \$10.10 for workers on federal contracts. Obama cited his authority to do so under the Federal Property and Administrative Services Act. Congress intended to create an "economical and efficient system" for the procurement and supply of property and "nonpersonal services" — meaning contracts without the typical level of government oversight and control.

"Raising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs," Obama wrote in his executive order. "These savings and quality improvements will lead to improved economy and efficiency in Government procurement."

The new regulations went into effect in 2015. The federal minimum wage for non-covered workers remained at \$7.25 per hour.

In 2018, Trump authored an executive order of his own cutting outdoor recreation workers out from the contractor minimum wage. Pointing to multi-day river tours and the numerous hours of overtime that could result, Trump believed that requiring outfitters to pay a higher wage to seasonal guides "threatens to raise significantly the cost of guided hikes and tours on Federal lands, preventing many visitors from enjoying the great beauty of America's outdoors."

Now, unless Brimmer takes action to halt it, Biden's wage raise will take effect at the end of January. The order, plus the accompanying Department of Labor regulations, also establishes overtime pay of \$22.50. It applies to contracts and "contract-like instruments" created or renewed after Jan. 30.

The lawsuit against the minimum wage order claims that Biden exceeded his authority by using the federal land permits as a basis to regulate river guides' compensation, and that the Department of Labor's rules are arbitrary and capricious. In requesting an injunction, the plaintiffs spoke to the costs they will incur from providing \$15 per hour plus overtime.

Bradford testified that in his experience, even guides who oversee single-day excursions sometimes want to work as many days as they can. His company's permit from the Bureau of Land Management allows operations along the Colorado River, but needs renewal in March. If the wage rule goes through, he said, Arkansas River Adventures would halt overnight trips and place seasonal employees on 40-hour schedules.

"We'll hire more staff and go to a four-day workweek," he said. "All these people live at our facility, so if we have to hire twice as much staff to do the same work, then we'll need more housing. All of that will drive expenses up."

David Costlow, executive director for the other plaintiff, Colorado River Outfitters Association, said the 50 members of his organization would find themselves adjusting all wages upward, not simply those that fell below \$15. Employees might also migrate to companies that do not operate on federal lands, and who would continue to let guides work as many hours as they wanted.

"We've always, as an industry, prided ourselves on accommodating people of modest incomes on vacation, even if it's a half-day trip. We think if the price rises, our worry is we will become an outfitting operation for the elite," he said.

The government pushed back on the witnesses' dire predictions. In response to questions from U.S. Department of Justice attorneys, Bradford conceded that Arkansas Valley Adventures provides many activities across the state other than river rafting, and only 10% of revenue comes from multi-day river trips on federal property. He also said that the employees currently working in excess of 40 hours per week make above \$15 per hour.

"Can you state with reasonable certainty the extent to which your members can or cannot absorb these costs?" lawyer Kate Talmor asked Costlow.

"In my discussions with them, they cannot absorb these costs without raising rates," Costlow responded.

Talmor also suggested that the new regulations may not completely apply to outfitters, citing [a provision of federal labor law](#) that sets certain overtime compensation at 56 hours per week, rather than 40. She went back and forth with Costlow about whether he believed overtime was based on the total amount of hours a guide is gone on a trip, or if it excluded time spent sleeping at camp.

Kruckenberglater observed that if Justice Department understood outfitters were not required to compensate guides for their entire time away, "we would love for the government to say in writing somewhere that they don't have to pay for that amount of time."

Brimmer did not give a clear indication of how he would rule on the request for a preliminary injunction. On the one hand, he wondered what impending harm would befall Arkansas Valley Adventures and the outfitters association without an immediate court order. On the other hand, he questioned whether a financial impact to the government existed in order to justify the use of presidential authority.

"It's interesting," Brimmer said, "that President Trump didn't say, 'Hey, President Obama couldn't have done this anyway.' Instead, what President Trump said was that the service contracts do not promote economy and efficiency.

"In other words," the judge continued, "even President Trump had the understanding that these people, namely outfitters, etc., were in the ballpark of the [president's authority] because they were making services available for the customers."

Neither party called on any seasonal guides to testify about the effect of the regulations.

The case is *Bradford et al v. U.S. Department Of Labor et al.*

MORE INFORMATION



Hickenlooper talks about his green goal in online town hall

Biden reverses Trump decision to shrink Bears Ears National Monument

Polis names members to the Colorado Forest Health Council

Appeals court reverses sovereign citizen's conviction for impersonating officer

10th Circuit blocks Biden minimum wage rule for outdoor recreation companies

Not Found

The requested URL was not found on this server.

Michael Karlik, Colorado Politics

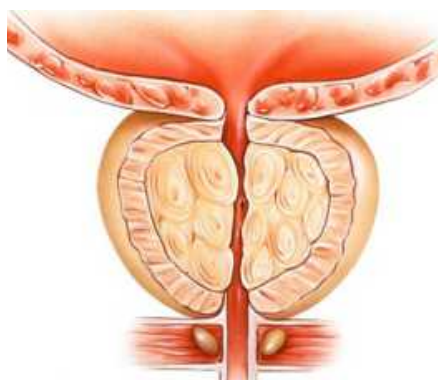
Around the Web

Ads by Revcontent



Shoppers Should Think Twice Before Buying From These Stores

ExpertsInMoney.co



Urologist: Do This Immediately if You Have Enlarged Prostate (Watch)

Patriot Health Zone



Psoriatic Arthritis Early Signals: Take a Look Immediately

Psoriatic Arthritis | Sponsore



Scientists: Brain Scan Uncovers the Real Root Cause of Tinnitus (Ear Ringing)

Tinnitus Miracle



New Hearing Discovery is Leaving Doctors Speechless

Healthier Patriot



New Senior Apartments Coming Nearby Parker (Take a Look at the Prices)

Senior Living | Sponsored List



Sign up for our newsletter

Get the latest breaking news and in-depth reports about Colorado politics - all in one email.