

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 17, 2022

Christopher M. Wolpert
Clerk of Court

DUKE BRADFORD, et al.,

Plaintiffs - Appellants,

v.

U.S. DEPARTMENT OF LABOR, et al.,

Defendants - Appellees.

No. 22-1023
(D.C. No. 1:21-CV-03283-PAB-STV)
(D. Colo.)

ECONOMIC POLICY INSTITUTE, et al.,

Amici Curiae.

ORDER

Before PHILLIPS and KELLY, Circuit Judges.

Plaintiffs move for an injunction pending appeal to suspend the effect of the government's recent rule requiring federal contractors to pay a minimum wage of \$15.00/hour and ending an exemption for parties, like plaintiffs, whose relationship with the federal government comes by way of special-use permits to provide outfitting services on federal lands ("Minimum Wage Order"). *See generally* Increasing the Minimum Wage for Federal Contractors, 86 Fed. Reg. 67,126 (Nov. 24, 2021).

We "may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705. We evaluate a motion for an injunction pending appeal

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using the preliminary injunction standard. *See Warner v. Gross*, 776 F.3d 721, 728 (10th Cir. 2015). Thus, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008). “As a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.” *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005) (internal quotation marks omitted).

Plaintiffs have demonstrated an entitlement to relief from the Minimum Wage Order in their particular circumstances. Accordingly, applying the Minimum Wage Order’s severance clause, 29 C.F.R. § 23.80, we enjoin the government from enforcing the Minimum Wage Order in the context of contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands. This injunction shall remain in force until further order of this court.

We deny plaintiffs’ alternative request for expedited merits consideration as moot.

We grant the motion filed by the National Employment Law Project, the Communications Workers of America, the Service Employees International Union, the National Women’s Law Center, and the Economic Policy Institute to submit an amicus brief in support of the government.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk