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Our Neil McPhie, Esq. discusses with Roll Call impact of minimum wage increase on contractors.

How Much Do Congressional Contractors Make? It Depends

By Hannah Hess

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Democrats have championed pay issues on Capitol Hill, promoting equal pay for women, pushing legislation that would increase the minimum wage and praising President Barack Obama for imposing his policies on federal contractors. New executive orders to bar federal contractors from retaliating against employees who discuss their pay with each other and require them to provide compensation data based on gender and race have won praise from House Minority Leader Nancy Pelosi, D-Calif., as “concrete actions to advance the equal pay effort.” But the administration’s new rules, including an executive order to increase the minimum wage to \$10.10 per hour for workers on new government contracts, only apply to companies that contract with the executive branch. The contract employees of the legislative branch — workers performing a broad range of jobs around Capitol Hill, ranging from technology support and construction, to security, food and janitorial services — are not necessarily affected. Democrats have aimed to keep pay issues on the front burner. On April 8, for instance, Senate Majority Leader Harry Reid attempted to use Equal Pay Day to push the “Paycheck Fairness Act,” a measure the Nevada Democrat promised would “give working women and their families a fair shot,” but those efforts were eventually blocked by Republicans. How much many workers who ply their trades on the Hill make, though, is a tricky thing to measure. At least 2,500 contract

workers provide services to the various agencies that support Congress, according to a survey of legislative branch agencies conducted by CQ Roll Call. At many agencies, the size of that workforce fluctuates throughout the year, depending on demand. Although congressional pay has received plenty of attention in recent weeks, thanks to a suggestion from Rep. James P. Moran, D-Va., that members of Congress are "underpaid," data on compensation at congressional support agencies are limited. Most agency spokespeople told CQ Roll Call they were not aware of how much the companies they contract with were paying their workers. Contracts often mandate that companies abide by applicable federal employment laws, according to Neil McPhie, director of legal services for Tully Rinckey PLLC, and those regulations could also address the minimum wage. Currently, the federal minimum wage is \$7.25. Obama's action on the executive branch slowly trickles into workers' paychecks, raising wages to \$10.10 beginning in 2015 and at the start of new contracts. Washington, D.C., and 21 states have laws establishing minimum wages above the federal rate. The District's minimum-wage workers earn \$8.25 per hour. A recently enacted increase will raise that rate to \$9.50 on July 1. McPhie, a past governor of the Merit Systems Protection Board appointed by President George W. Bush in 2003, said it is possible that companies contracting with legislative branch agencies are not required to abide by D.C. minimum wage rates. He emphasized contracts are written "piece by piece." Legislative branch agencies have seen their budgets slashed in recent years, as Republicans have used the spending bill funding operations around Capitol Hill as an opportunity to lead by example and show they can cut costs in their own backyard. Buyouts, layoffs and employee retirements, combined with ongoing hiring freezes, have resulted in smaller staff sizes. Architect of the Capitol Stephen T. Ayers, who is responsible for maintenance, operations, development and preservation of 17.4 million square feet of buildings and more than 553 acres of land throughout Capitol Hill, solicits bids for many of the AOC's major construction projects. For instance, the multi-year Capitol Dome renovation aimed at restoring the heavily cracked icon to its former glory involved a \$40 million deal with a joint venture of Turner Construction Co. and Smoot Construction Co. AOC spokeswoman Laura Condeluci could not provide a total number of contract workers, but said there are fewer than 20 contractors for the AOC earning less than the administration-proposed \$10.10

minimum wage. "Many of our contractors work in construction and trades and are subject to the Davis-Bacon Act," Condoluci said in an email. "The Davis-Bacon wage determinations for D.C. are all above \$10.10 per hour. The overwhelming majority of Service Contract Act employees make above \$10.10." House Chief Administrative Officer Ed Cassidy, who manages House computer systems, finances, human resources, media and procurement, employs up to 1,000 contract workers during peak seasons. CAO spokesman Dan Weiser said he did not have data available on how much those workers earn. The bulk of CAO contractors work for Restaurant Associates, a New York-based company that operates the chamber's dining services. Spokeswoman Gina Zimmer did not respond to questions from CQ Roll Call about pay rates. The Library of Congress, an agency that has reduced its workforce by about 1,400 people in recent years, has approximately 900 contractors at work, primarily in the areas of facilities support, information technology support and collections support, according to spokeswoman Gayle Osterberg. "Companies that contract with the Library must pay their employees in accordance with applicable federal employment laws, such as the Department of Labor prevailing wage rates established under the Service Contract Act," Osterberg said in an email. "In addition, they are required to abide by state and federal laws related to minimum wage." At any given time, Senate Sergeant-at-Arms Terrance W. Gainer has between 200 and 300 contract workers who provide services to the Senate. "While we don't have the detailed information on salaries of individuals employed by our contractors, given the nature of their work, I would be shocked if any earn less than the minimum wage," Gainer said in an email. About 350 contractors provide services to the Government Accountability Office, including 168 tasked with security and maintenance, and 170 who are responsible for IT support. Data on their paychecks were not available from the GAO. The number-crunchers at the Congressional Budget Office contract with experts and consultants — all paid at an hourly rate more than \$10.10 — on a temporary or intermittent basis. For 2014, the CBO expects that "total hours for contract services will be roughly equivalent to the hours of one employee," according to spokeswoman Deborah Kilroe. The Government Printing Office has about 100 contract employees who work in IT and technology development, security and the GPO's cafeteria operations. All earn more than \$10.10 per hour, according to GPO spokesman Gary

Somerset. Legislative branch agencies are required to follow many of the same employment and workplace laws applied to the public and private sectors under the Congressional Accountability Act, enacted in 1995. Under that law, many provisions of the Fair Labor Standards Act of 1938, including federal minimum wage, apply to legislative branch employees. The CAA also established the Office of Compliance as an independent, nonpartisan agency to administer and enforce those workplace and employment laws, educate members and offices on their rights and obligations, and to investigate violations. However, contract workers are generally not considered "covered employees" under the CAA, according to Scott Mulligan, the OOC's deputy executive director for the House. McPhie couldn't speculate on how D.C.'s minimum wage increase, culminating in an \$11.50 minimum in July 2016, might affect legislative branch contracts, but predicted it "might get messy." "If a legislative branch agency enters into a contract, that contract has certain terms," he said. "I don't think you could vary terms under contract law."