

New Year, New Salary Thresholds for NY Overtime Exemptions and Minimum Wage Increases

Effective December 31, the New York Department of Labor amended the state’s overtime regulations, substantially increasing the salary thresholds for the administrative and executive exemptions based on geographic location and employer size. Along with the higher thresholds, the state also increased minimum hourly wage rates for 2017. Employers will want to review their pay practices to ensure compliance.

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Background

Both the federal Fair Labor Standards Act (FLSA) and the New York Minimum Wage Act generally require the payment of overtime wages for work performed in excess of 40 hours per week. The FLSA and New York state law each exempt employees who work in a *bona fide* executive or administrative capacity from overtime pay requirements, and establish criteria for the exemptions. To the extent that the state exceptions match the FLSA’s, the New York Department of Labor (NYSDOL) typically applies federal standards to determine overtime eligibility. Where federal and state laws and regulations differ, New York employers are subject to those that provide the most generous benefit to their employees.

Last October, the NYSDOL [proposed](#) amending its Wage Orders to increase the salary threshold for both the executive and administrative exemptions from state overtime requirements and to raise the state’s minimum hourly wage rates. Proposed increases were to be phased in over a number of years, and varied depending on geographic location and employer size. [Adopted](#) without change on December 28, the new wage rules took effect on December 31, 2016.



Overtime Exemptions

On December 31, the minimum salary level for “white-collar” executive and administrative exemptions from New York state’s overtime pay requirements increased from \$675 per week (\$35,100 annually) to differing salary levels based on where the employee works and, in New York City, by employer’s size. As shown on the schedule below, increases in the exemption thresholds will be phased in over a number of years, with employers in New York City facing higher salary floors and a speedier phase-in than employers outside the city.

Minimum Salary Levels for New York Executive and Administrative Exemptions

Employer Size/Location	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
NYC – 11 or more employees	\$825\week (\$42,900 annually)	\$975\week (\$50,700 annually)	\$1,125\week (\$58,500 annually)			
NYC – 10 or fewer employees	\$787.50\week (\$40,950 annually)	\$900\week (\$46,800 annually)	\$1,012.50\week (\$52,650 annually)	\$1,125\week (\$58,500 annually)		
Nassau, Suffolk and Westchester Counties	\$750\week (\$39,000 annually)	\$825\week (\$42,900 annually)	\$900\week (\$46,800 annually)	\$975\week (\$50,700 annually)	\$1,050\week (\$54,600 annually)	\$1,125\week (\$58,500 annually)
Remainder of New York state	\$727.50\week (\$37,830 annually)	\$780\week (\$40,560 annually)	\$832\week (\$43,264 annually)	\$885\week (\$46,020 annually)	\$937.50\week (\$48,750 annually)	

A controversial federal overtime rule that would have more than doubled the annual salary threshold for an executive, administrative or professional exemption from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually) was slated to take effect last month, but a federal judge temporarily blocked it from taking effect. The federal rule remains in limbo as legal challenges continue in Texas and the preliminary injunction is on appeal to the 5th Circuit. (See our [December 9, 2016 FYI Alert](#).)

To qualify for an executive or administrative exemption in New York, employees must satisfy the higher of applicable state or federal salary thresholds. With the increase in the federal threshold on hold, executive and administrative employees who currently are exempt under federal law will remain eligible for overtime pay under state law unless they satisfy the higher salary thresholds in New York’s new Wage Orders.

Comment. Unlike the exemption for professional employees under the FLSA, there is no salary threshold for exempt professionals (learned or creative) under New York law. Thus, the state’s new salary floors do not apply to them.

Minimum Wage Rates

Last year, New York Governor Andrew Cuomo signed into law as part of the 2016-17 state budget a series of minimum wage increases to gradually raise the hourly minimum wage from \$9.00 to \$15.00 across the state. The budget deal provided for rate increases to be phased in on differing regional schedules. Increases were slated for each of three regions – New York City, downstate (Nassau, Suffolk and Westchester Counties), and upstate (the remainder of the state) – on the following schedule. (See our [April 27, 2016 For Your Information](#).)

Minimum Hourly Wage Rates*

Employer Size/Location	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
NYC – 11 or more employees	\$11.00	\$13.00	\$15.00			
NYC – 10 or fewer employees	\$10.50	\$12.00	\$13.50	\$15.00		
Nassau, Suffolk and Westchester Counties	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York state	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	TBD annually by labor commissioner, up to \$15.00 per hour

* Different minimum wage rates apply to the fast food industry and tipped employees. The rates for fast food workers will reach \$15.00 at the end of 2018 for NYC and in July 2021 for the rest of the state.

As shown above, employers in New York City with 11 or more employees will face a \$15 per hour minimum wage rate at the end of 2018 while smaller employers in the city will see that rate at the end of 2019. Employers in other parts of the state will experience slower, smaller rate hikes.

Comment. The New York State Minimum Wage Orders contain overtime pay requirements that are in addition to those required by federal law. Certain employers may pay employees who are exempt under the FLSA but are entitled to overtime pay under state law at a rate of 1½ times the statutory minimum wage, regardless of the amount of their regular rate of pay. Employers should make sure to review both the federal and state requirements to determine proper overtime pay.

New Minimum Wage Enforcement and Outreach Unit Created

On January 2, Governor Cuomo **announced** the creation of a new 200-member multi-agency unit led by the NYSDOL to enforce the state’s new minimum wage. A first-of-its-kind in the nation, the unit will also educate workers and businesses on their rights and responsibilities under the new law.

In Closing

To usher in 2017, New York substantially increased the salary thresholds for its administrative and executive exemptions from overtime pay and raised minimum hourly wage rates that differ based on location and, in NYC, employer size. Employers will want to review their pay practices to ensure compliance.

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