

## New York to Increase Minimum Wage and Salary Thresholds for Exemptions on December 31

New York state's minimum hourly wage rates and the salary thresholds for administrative and executive exemptions from state overtime pay requirements are scheduled to increase effective December 31. The new rates and thresholds will vary based on geographic location of the workplace and employer size, with businesses in New York City facing the highest minimum wages and salary floors. Employers will want to review their employee classifications and pay practices to ensure compliance.

### Background

Both the federal Fair Labor Standards Act (FLSA) and the New York Minimum Wage Act generally require that nonexempt employees receive at least the applicable minimum hourly wage and overtime pay for work performed in excess of 40 hours in a workweek. Because the state's general minimum wage rates exceed the current federal minimum, New York employees must be paid at the higher state rates.

Similarly, both the FLSA and New York state law exempt employees who work in a *bona fide* executive or administrative capacity from overtime pay requirements, but the standards differ. Because the FLSA sets a substantially lower salary floor than the state for those exemptions, New York employees must satisfy the state salary threshold, among other criteria, for exempt status.

Last year, New York increased state minimum wage rates and salary thresholds for executive and administrative exemptions from overtime requirements based on where the employee works and, in New York City, by employer's size. Effective December 31, 2016, the minimum hourly wage increased to \$9.70 upstate, \$10 in Nassau, Suffolk and Westchester Counties, \$10.50 for NYC employers with 10 or fewer employees, and \$11 for larger NYC employers. Applicable salary thresholds for those "white-collar" exemptions ranged from \$727.50 per week upstate to \$825 per week in NYC. (See our [January 12, 2017](#) For Your Information.)



## Minimum Wage Rates

The 2016-17 New York state budget provided for staged increases each year on December 31 to raise the minimum wage to \$15.00 per hour across the state, with increases phased in on differing regional timetables. Annual increases slated for each of three geographic regions – NYC, downstate (Nassau, Suffolk and Westchester Counties), and upstate (the remainder of the state) – began last year and will continue on the following schedules. (See our [April 27, 2016](#) *For Your Information*.)

### General 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	**

\* Different minimum wage rates apply to the fast food industry and tipped employees. The rates for fast food workers will reach \$15.00 by December 31, 2018 in NYC and by July 1, 2021 in the rest of the state.

\*\* Rates will be increased annually, based on economic indices including the Consumer Price Index, until the minimum wage rate reaches \$15 per hour. Starting in 2021, the Labor Commissioner will publish the annual increases on or before October 1.

**Comment.** 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 review both the federal and state requirements to determine proper overtime pay.

Based on the phase-in schedule above, NYC employers with at least 11 employees will face a \$2 increase in the minimum wage rate this month, and a \$15 hourly minimum wage by year-end 2018. All other employers in the city, regardless of size, will be subject to a \$15 minimum wage rate by year-end 2019. Employers in other parts of the state will experience slower, smaller rate hikes each year until the applicable minimum wage reaches \$15 per hour.

**Comment.** Because employees covered by the FLSA remain covered by the New York State Minimum Wage Orders (including their supplemental wage provisions), employers must comply with state and federal law. In cases where the rates differ, the higher wages apply.

## Overtime Exemptions

As shown below, the annual increases in the exemption thresholds for executive and administrative employees that began last year will continue through 2021, 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 (\$42,020 annually)	\$937.50\week (\$48,750 annually)	

## In Closing

To usher in 2018, New York will increase minimum wage rates and salary thresholds for overtime pay exemptions. Employers will want to review their employee classifications and pay practices to ensure compliance.

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