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

Effective December 31, 2018, New York state increased the salary thresholds for its administrative and executive exemptions from overtime pay, based on geographic location and employer size. Along with the higher thresholds, the state also increased minimum hourly wage rates for 2019. Employers will want to review their employee classifications and 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. Both the FLSA and New York state law set minimum wage rates, exempt employees who work in a *bona fide* executive or administrative capacity from overtime pay requirements, and establish criteria for the exemptions. Where federal and state rates and/or exemptions differ, New York employers are subject to those that provide the most generous benefit to their employees.

As part of the 2016-17 state budget, New York Governor Andrew Cuomo signed into law a series of minimum wage increases to gradually raise the state hourly minimum wage to \$15.00. Phased-in rate increases were set for each of three regions — New York City, downstate (Nassau, Suffolk and Westchester Counties), and upstate (the remainder of the state) — beginning on December 31, 2016. (See our [April 27, 2016 For Your Information.](#)) Wage Orders issued by the New York State Department of Labor (NYSDOL) scheduled applicable increases in the state salary threshold for both the executive and administrative exemptions and minimum hourly wage rates based on geographic location and employer size. (See our [January 12, 2017 For Your Information.](#))

Overtime exemptions

On December 31, 2018, the minimum salary level for “white-collar” executive and administrative exemptions from New York state’s overtime pay requirements increased for the third time in three years. The salary levels differ based on where the employee works and, in New York City, by the

employer's size. As shown on the schedule below, since 2016 the salary floors have risen higher and more quickly for New York City employers, with further salary level increases slated for employers outside the city through 2021.

Buck comment. Unlike the FLSA, New York law does not set a salary threshold for exempt professional employees (learned or creative). However, most of those employees would still have to satisfy the federal salary minimum for exemption.

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)	

To qualify for an executive or administrative exemption in New York, employees must satisfy the higher of the applicable state or federal salary threshold. With the current federal threshold for an executive, administrative or professional exemption set at \$455 per week (\$23,660 annually), 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 Wage Orders.

Buck comment. Adjusting for higher overtime salary thresholds becomes more complex and potentially more costly as the number of employees for whom employers have to consider pay increases, adjustments to employee classifications, and/or changes in timekeeping systems increases.

Minimum wage rates

The third in a series of annual increases to phase in a \$15.00 general minimum wage rate across the state took effect on December 31, 2018. The rate increases differ by region — New York City, downstate (Nassau, Suffolk and Westchester Counties), and upstate (the remainder of the state) —

on the following schedule. Because all regional rates exceed the federal hourly minimum rate of \$7.25, employers must pay employees at the applicable higher state rates.

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, up to \$15.00 per hour**

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

** Starting in 2021, annual increases will be published by the commissioner of labor on or before October 1. They will be based on percentage increases determined by the director of the Division of Budget, based on economic indices, including the Consumer Price Index.

Buck 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 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. Because the availability of that exception is limited, employers should review both the federal and state requirements to determine proper overtime pay.

In closing

To usher in 2019, New York increased the salary thresholds for its overtime exemptions and raised minimum hourly wage rates in the third of six scheduled annual increases. Because the new levels differ based on location — and in NYC, on employer size — employers will want to review their employee classifications and pay practices to ensure compliance.

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