



Empire State employers beware: salary basis and minimum wage for New York employers scheduled to increase as of December 31, 2016

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While many New York state employers breathed a sigh of relief after a nationwide preliminary injunction halted implementation of the U.S. Department of Labor's (USDOL) new overtime pay rule,¹ which would have increased the Fair Labor Standards Act's (FLSA) salary threshold for the "white collar" exemptions to \$913 per week, they are not off the hook. On December 28, 2016, the New York State Department of Labor (NYSDOL) published its own rule increasing the base salary for the executive and administrative exemptions² under the New York Labor Law (NYLL). These increases will become effective December 31, 2016, irrespective of the status of the federal regulations. In addition, the NYSDOL's increase to the minimum hourly wage, likewise scheduled for December 31, 2016, will proceed³ as expected.

NYLL salary threshold increases

On October 19, in the midst of many employers' haste to comply with the anticipated federal increases, the NYSDOL proposed to amend the existing wage orders to increase the salary threshold for the executive and administrative exemptions under the NYLL. Similar to the gradual increases implemented for New York's minimum wage levels, the amendments raise the salary threshold, from the current amount of \$675 per week, in tiers based on geography and size, as set forth below:

¹ See our prior alert, "*Hold your horses — Texas federal judge blocks DOL's overtime rule*," available [here](#).

² Unlike the FLSA, there is no salary basis requirement for those who meet the duties test for the professional exemption under New York law, so those employees will need to meet only the FLSA salary basis minimum to be exempt from overtime.

³ See our prior alert, "*New York passes landmark legislation raising minimum wage and mandating paid family leave*," available [here](#).

Large employers (11+ employees) in New York City:

- \$825.00 per week on and after 12/31/16
- \$975.00 per week on and after 12/31/17
- \$1,125.00 per week on and after 12/31/18

Small employers (10 or fewer employees) in New York City:

- \$787.50 per week on and after 12/31/16
- \$900.00 per week on and after 12/31/17
- \$1,012.50 per week on and after 12/31/18
- \$1,125.00 per week on and after 12/31/19

Employers in Nassau, Suffolk, and Westchester Counties:

- \$750.00 per week on and after 12/31/16
- \$825.00 per week on and after 12/31/17
- \$900.00 per week on and after 12/31/18
- \$975.00 per week on and after 12/31/19
- \$1,050.00 per week on and after 12/31/20
- \$1,125.00 per week on and after 12/31/21

Employers outside of New York City, Nassau, Suffolk, and Westchester Counties:

- \$727.50 per week on and after 12/31/16
- \$780.00 per week on and after 12/31/17
- \$832.00 per week on and after 12/31/18
- \$885.00 per week on and after 12/31/19
- \$937.50 per week on and after 12/31/20

The NYSDOL's changes received little attention previously, as most employers' conformity with the USDOL's increases would have put them in compliance with the NYSDOL's increases until at least the end of 2017. To this end, employers who implemented salary increases in anticipation of the USDOL's rule changes may rest easy for a couple of years (provided, of course, that their employees are classified properly under the USDOL's corresponding duties tests). Employers who suspended or canceled planned salary increases, as well as employers who were not previously concerned about the increases because they are not subject to the Fair Labor Standards Act (FLSA)—many small nonprofits in particular— however, must be careful to ensure compliance with New York's changes to the salary threshold. As these changes will require an increase for many New York employees to remain exempt, regardless of whether the USDOL's increases ever take effect.

NYLL minimum wage increases

The NYSDOL's annual minimum wage increases are also scheduled to continue. Specifically, as of December 31, 2016, the most broadly applicable minimum wage requirements are as follows:

Large Employers (11+ employees) in New York City:

- Employees receive \$11.00 per hour
- Tipped employees receive 7.50 per hour with a \$3.50 tip credit

Small Employers (10 or fewer employees) in New York City:

- Employees receive \$10.50 per hour
- Tipped employees receive \$7.50 per hour with a \$3.00 tip credit

Employers in Nassau, Suffolk, and Westchester Counties:

- Employees receive \$10.00 per hour
- Tipped employees receive \$7.50 per hour with a \$2.50 tip credit

Employers in All Other Areas of New York State:

- Employees receive \$9.70 per hour
- Tipped employees receive \$7.50 per hour with a \$2.20 tip credit

Fast Food Establishments in New York City:

- Employees receive \$12.00 per hour

Fast Food Establishments Outside New York City:

- Employees receive \$10.75 per hour

Violations of the NYLL carry severe penalties, including liquidated damages and attorneys' fees. Accordingly, we urge employers comply with the increases to the minimum wage and ensure their employees are correctly classified, with respect to both the NYSDOL's salary changes and the corresponding duties tests.

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