

Client Alert

New York Minimum Wage and Salary Thresholds Increase in 2019

January 2, 2019 – Happy New Year! With the arrival of 2019, New York employers must be prepared for another in a series of significant wage increases existing under previously enacted New York State law. As of December 31, 2018, New York employers are required to pay employees a minimum wage of between \$11.10 and \$15 per hour, depending on the employer’s geographic location within the state and the size of its workforce, as reflected on the charts below. The tip credit allowance for restaurant employers has also changed for 2019, as also reflected in the charts below. Of equal importance, minimum annualized salary thresholds to classify employees as exempt from overtime pay requirements also increased on the last day of the calendar year. For example, New York City employers with more than 11 employees are now required to pay exempt employees a base salary of \$58,500 per year. A full summary of the salary thresholds for exempt employees is also detailed in the charts below.

Employers should ensure that their payrolls and payroll records are in compliance with these noted wage increases effective on the date such minimums changed. **Employers must also comply with New York’s Wage Theft Prevention Act, by providing notice of changes in wage rates to each affected employee in such employee’s preferred language this week.** Employers should further review their employee handbooks and required legal notice postings to confirm they correctly set forth the new minimum wage and salary threshold standards.

New York State Minimum Wage Increases (Hourly Employees)

Under the multi-tiered system that has developed over the past several years (as detailed in [last year’s alert](#)), increases to the minimum wage will take effect each year through 2021, raising the minimum wage to \$15.00 per hour under three different schedules across three different regions of New York State: (1) New York City’s 5 boroughs; (2) Nassau, Suffolk, and Westchester counties (“Remainder of Downstate”); and (3) the remainder of New York State (“Upstate”). The minimum wages increases are also based upon the size of an employer’s workforce. The increases are substantial for all regions, but especially in New York City, where employees’ minimum hourly wage will rise by \$2.00 per hour for employers with 11 or more employees and \$1.50 per hour for employers with 10 or fewer employees. As a reminder, employers cannot satisfy hourly minimum wage obligations through bonus payments.

The schedule below fully summarizes the increases that took effect on December 31, 2018 and those that will take effect on the last day of 2019, 2020 and 2021.

| Effective Date | New York City “Large” Employers (11 or More Employees) | New York City “Small” Employers (10 or Fewer Employees) | Remainder of Downstate (Nassau, Suffolk and Westchester counties) | Upstate (outside of New York City, Nassau, Suffolk and Westchester counties) |
|-----------------------|---|--|--|---|
| December 31, 2018 | \$15.00 per hour | \$13.50 per hour | \$12.00 per hour | \$11.10 per hour |
| December 31, 2019 | \$15.00 per hour | \$15.00 per hour | \$13.00 per hour | \$11.80 per hour |
| December 31, 2020 | \$15.00 per hour | \$15.00 per hour | \$14.00 per hour | \$12.50 per hour |
| December 31, 2021 | \$15.00 per hour | \$15.00 per hour | \$15.00 per hour | *To be determined |

Tip Credit Employees

The new rates also raise the minimum wage for tipped employees in the state, along with the “tip credit” that hospitality industry employers are allowed to claim. The schedule below summarizes the increases for tipped service employees prior to the receipt of tips, the tip credit amount, the raises that took effect on December 31, 2018 and those that will take effect in on the last day of the next three calendar years.

| Effective Date | New York City “Large” Employers (11 or More Employees) | New York City “Small” Employers (10 or Fewer Employees) | Remainder of downstate (Nassau, Suffolk and Westchester counties) | Remainder of state (outside of New York City, Nassau, Suffolk and Westchester counties) |
|-----------------------|---|--|--|--|
| December 31, 2018 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$9.00 per hour Tip credit: \$4.50 Total: \$13.50 | \$8.00 per hour Tip credit: \$4.00 Total: \$12.00 | \$7.50 per hour Tip credit \$3.60 Total: \$11.10 |
| December 31, 2019 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$8.70 per hour Tip credit: \$4.30 Total: \$13.00 | \$7.85 per hour Tip credit: \$3.95 Total: \$11.80 |
| December 31, 2020 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$9.35 per hour Tip credit: \$4.65 Total: \$14.00 | \$8.35 per hour Tip credit: \$4.15 Total: \$12.50 |
| December 31, 2021 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | \$10.00 per hour Tip credit: \$5.00 Total: \$15.00 | *To be determined |

New York State Minimum Salary Thresholds Increase (Salary Employees)

New York City and State employers should also note the increased minimum salary thresholds required for employees to qualify for the executive and administrative exemptions from overtime pay requirements under New York state law. Under the New York State Department of Labor

(the “NYS DOL”) regulations that took effect in 2016, the minimum salary thresholds associated with these exemptions will increase annually at different rates based on the region in which the employee works. Specifically, as of December 31, 2018, the new minimum salary thresholds have increased as follows:

| New York City | Remainder of downstate (Nassau, Suffolk and Westchester counties) | Upstate (outside of New York City, Nassau, Suffolk and Westchester counties) |
|--|--|--|
| <p>“Large” Employers: (11 or more employees): \$1,125.00 per week / \$58,500 annually (up from \$975.00 per week/\$50,700 annually)</p> <p>“Small” Employers: (10 or fewer employees): \$1,012.00 per week / \$52,624 annually (up from \$900.00 per week/\$46,800 annually)</p> | <p>All Employers: \$900.00 per week / \$46,800 annually (up from \$825.00 per week/\$42,900 annually)</p> | <p>All Employers: \$832.00 per week / \$43,264 annually (up from \$780.00 per week/\$40,560 annually)</p> |

The NYSDOL explains in its published [FAQs](#) that a “large” employer is any business that employs at least one employee in New York City and has employed more than 10 employees (for a total of 11 or more) *at any time* during the current or prior calendar year and among all worksites. Conversely, a “small” employer is any business that employs at least one employee in New York City and has not employed more than 10 employees (for a total of 11) *at any time* during the current or prior calendar year among all worksites. Only those employees of a “large” New York City employer who work *within* New York City, however, must be paid the higher minimum salary in order to qualify as potentially exempt from overtime pay, subject to satisfaction of other factors.

New York City-based employers must count all employees—regardless of whether they are full-time, part-time or seasonal—for the purposes of determining whether they are classified as “large” or “small.” Employers that begin the year with fewer than 11 employees, which then reach 11 employees during the year, will be obligated to pay the higher minimum salary to New York City-based employees for the remaining portion of the year and the next calendar year.

As with wage rates, employees’ salaries must meet the minimum thresholds without taking into account bonuses, incentive payments or commissions they may receive as part of their overall compensation. For example, an account manager in New York City earning an annual salary of \$45,000, along with a \$15,000 year-end bonus will not qualify as potentially exempt from overtime pay requirements because the year-end bonus would not be considered part of his or her annualized salary.

It is important to note, as well, that employees who earn a salary at or above the applicable state threshold are not automatically deemed exempt from eligibility for overtime pay for hours worked beyond 40 hours per workweek. Rather, an employee is only deemed exempt if the terms and conditions of his or her employment satisfy both the salary and duties requirements set

forth under federal and state law. Thus, in addition to meeting the salary requirements above, New York employees qualifying for the executive or administrative exemptions must regularly perform certain job duties required to be performed under those exemptions.¹

Employer Should Be Prepared

Employers should be vigilant and determine a course of action to remain in compliance with the changes in these wage rates immediately. This could require raising employees' salaries so as to remain at or above the new thresholds, or deciding instead to reclassify previously exempt employees as hourly (who will then be subject to statutory overtime requirements). In connection with these decisions, employers may also consider paying smaller bonuses in light of the salary increases they must grant. In any event, employers must be and remain in compliance. Violations of minimum wage laws—even if unintentional—are costly. Employers may be liable not only for minimum wage underpayments and/or back pay or overtime compensation, but also for interest, attorneys' fees and costs, and potentially liquidated damages equal to double the amount owed to the underpaid employee.

We also cannot stress strongly enough that any change of pay rate occasioned or necessitated by any of the above requires an employer to provide that employee with a new wage notice pursuant to the New York State Wage Theft Prevention Act.

If you require any additional information concerning minimum wage rates or minimum salary thresholds, or about any other employment-related issues, please contact:

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¹ As a reminder, an individual qualifies for the executive exemption under federal and New York state law if:

- a) His or her primary duties consist of the management of the enterprise of the employer;
- b) He or she customarily and regularly directs the work of two or more other employees within the employer;
- c) He or she has the authority to hire and fire other employees or his or her recommendations as to hiring and firing other employees carry particular weight;
- d) He or she customarily and regularly exercises discretionary powers*; and
- e) His or her salary meets the applicable threshold above.

Alternatively, an individual qualifies for the administrative exemption under federal and New York state law if:

- a) His or her primary duties consist of the performance of office or non-manual field work directly related to the management or general operations of the employer;
- b) He or she customarily and regularly exercises discretion and independent judgment;
- c) He or she regularly and directly assists an employer or an employee employed in a bona fide executive or administrative capacity; or performs, under only general supervision, work along specialized or technical lines requiring specialized training, experience or knowledge*; and
- d) His or her salary meets the applicable threshold above.

*New York state law requirement only.