

Client Alert

New York State Minimum Wage and Salary Thresholds Set to Increase on December 31, 2019

December 13, 2019 – As 2019 comes to a close, New York employers must prepare for another minimum wage hike implemented under [previously enacted state law](#). Specifically, on December 31, 2019, New York employers will be required to pay employees a minimum wage of between \$11.80 and \$15.00 per hour, based on the employer’s geographic location within the state and the size of its workforce. Tipped employees within the state will receive the same raise, while accounting for the “tip credit” that hospitality industry employers are allowed to claim. These minimum wage increases also precipitate a proportional increase in the minimum salary required for overtime exempt executive and administrative employees across New York State. A fully summary of each of these increases is provided below.

Employers should ensure that their payrolls, payroll records and, when appropriate, payroll providers, are in compliance with these noted wage increases effective on the date such minimums change. **Please note that 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](#).** Employers should further review their employee handbooks and required legal notice postings to confirm that they correctly set forth the upcoming minimum wage rates.

New York State Minimum Wage Increases (Hourly Employees)

By now, New York employers should be quite familiar with the multi-tiered system that increases the minimum wage across the state. As noted in our [January 2, 2019](#) client alert, these increases 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 five 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.

New York City employers with 11 or more employees (“Large Employers”) are already paying employees \$15.00 per hour as of December 31, 2018, and will not experience another increase. Employers in each of the other delineated regions, however, must prepare for substantial wage increases in the new year. Specifically, the minimum hourly wage will rise by \$1.50 per hour for New York City employers with 10 or fewer employees (“Small Employers”), \$1.00 per hour for

employers located in the Remainder of Downstate and \$0.70 per hour for Upstate employers. As a reminder, employers cannot satisfy hourly minimum wage obligations through bonus payments.

The schedule below fully summarizes the increases that will take effect on December 31, 2019, and those that will take effect on the last day of 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)
<i>Current Wage Rate</i>	\$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 minimum wage increases also apply to tipped employees in the state, accounting for the “tip credit” that hospitality industry employers may claim. Please note that in addition to the wage increases, the amount of the tip credit also increases (\$0.50 for Small Employers in New York City, \$0.30 for employers in the Remainder of Downstate and \$0.35 for Upstate employers). The schedule below summarizes all increases for tipped service employees prior to the receipt of tips, the tip credit amount, the raises that will take effect on December 31, 2019 and those that will take effect on the last day of 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)
<i>Current Wage Rate/Tip Credit</i>	\$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)

The minimum salary thresholds required for employees to qualify for the executive and administrative exemptions from overtime pay requirements under New York state law are also rising proportionally with the minimum wage. Under the New York State Department of Labor (the “NYSDOL”) 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. Large Employers in New York City (11 or more employees) will not face another increase, as the minimum salary threshold for exempt employees remains at \$1,125.00 per week or \$58,500 annually. However, each of the other categories of employers across the state will be forced to pay their exempt employees at or above certain higher salary levels. Specifically, as of December 31, 2019, the new minimum salary thresholds have increased as follows:

Effective Date	New York City	Remainder of downstate (Nassau, Suffolk and Westchester counties)	Upstate (outside of New York City, Nassau, Suffolk and Westchester counties)
<i>Current Salary Thresholds</i>	<p><u>“Large” Employers:</u> (11 or more employees): \$1,125.00 per week / \$58,500 annually (up from \$975.00 per week/\$50,700 annually)</p> <p><u>“Small” Employers:</u> (10 or fewer employees): \$1,012.00 per week / \$52,624 annually (up from \$900.00 per week/\$46,800 annually)</p>	<p><u>All Employers:</u> \$900.00 per week / \$46,800 annually (up from \$825.00 per week/\$42,900 annually)</p>	<p><u>All Employers:</u> \$832.00 per week / \$43,264 annually (up from \$780.00 per week/\$40,560 annually)</p>
December 31, 2019	<p><u>“Large” Employers:</u> (11 or more employees): \$1,125.00 per week / \$58,500 annually (no change)</p> <p><u>“Small” Employers:</u> (10 or fewer employees): \$1,125.00 per week / \$58,500 annually (up from \$1,012.00 per week / \$52,624 annually)</p>	<p><u>All Employers:</u> \$975.00 per week / \$50,700 annually (up from \$900.00 per week / \$46,800 annually)</p>	<p><u>All Employers:</u> \$885.00 per week / \$46,020 annually (up from \$832.00 per week / \$43,264 annually)</p>

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 crucially important to note, as well, that employees who earn an annualized salary at or above the applicable state threshold are not automatically deemed exempt from eligibility for overtime pay for hours worked in excess of 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 Similar duties tests (as under federal law or state laws other than New York) exist for employers outside New York.

Federal Minimum Salary Threshold Increase

As detailed in our [October 10, 2019](#) client alert, employers with operations outside of New York should note the increase in the federal minimum salary threshold to take effect on January 1, 2020. On that date, workers must earn at least \$684 per week, or \$35,568 annually (up from \$455 per week / \$23,660 annually), in order to qualify as exempt from overtime under the executive, administrative, or professional tests. The new federal rule also raises the salary threshold for “highly compensated employees” (“HCE”)—a category not specifically or separately recognized under New York law—to \$107,432 annualized² and, in so doing, provides employers the option to count certain nondiscretionary bonus, incentive, or commission compensation as constituting up to 10 percent of an employee’s annualized salary for purposes of meeting the HCE threshold.

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*²; 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*²; and
- d) His or her salary meets the applicable threshold above.

*New York state law requirement only.

² Highly compensated employees must only meet a “relaxed” duties test to be deemed exempt from overtime.

Best Practices

Employers should be vigilant and determine a course of action to remain in compliance with the changes in these minimum wage rates and salary levels 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, including strict recordation of hours worked). 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 and ensure that it is signed by the employee.

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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