

Are You Prepared for the Minimum Wage Law Changes in New York State?

December 23, 2019

Currently in New York City, minimum wage is \$13.50 per hour for businesses with 10 or fewer employees, and \$15.00 per hour for businesses with 11 or more employees. In Nassau, Suffolk and Westchester counties, minimum wage is \$12.00 per hour. In the remainder of New York State, minimum wage is \$11.10 per hour. These rates remain in effect until December 30, 2019 (and there are different hourly rates for workers in the fast food industry and tipped workers).

Upcoming Minimum Wage Increases

The minimum wage rates are scheduled to increase each year on December 31 until they reach \$15.00 per hour and the rate of increase differs based on employment location, industry and employer size.

General Minimum Wage Rate Schedule

Location	12/31/19	12/31/20	12/31/2021*
NYC - Large Employers (11 or more)			
NYC - Small Employers (10 or less)	\$15.00		
Long Island & Westchester	\$13.00	\$14.00	\$15.00
Remainder of New York State	\$11.80	\$12.50	*

* Annual increases for the rest of the State will continue until the rate reaches \$15 minimum wage (and \$10 tipped wage). Starting in 2021, the 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.

Minimum Salary for Exempt Employees

All employees are required to be paid overtime at a rate of one and one-half times their regular rates of pay for all hours actually worked over 40 in a workweek unless they are considered “exempt” from the overtime laws. In order to be considered exempt, employees must predominantly perform certain “duties” (generally, Executive, Administrative, or Professional), must be paid on a “salary basis” (i.e. not hourly, no deductions for hours not worked in a workweek except under narrow conditions), and must be paid a “minimum salary.”

The U.S. Department of Labor (DOL) recently issued its long-awaited final overtime rule which, when it goes into effect on January 1, 2020, will set the minimum salary threshold at \$684 per week (equivalent to \$35,568 per year for a full year worker) — up from \$455 per week, or \$23,660 per year. The final overtime rule also raised the total annual compensation level for “highly compensated employees” (HCE) from the currently enforced level of \$100,000 per year to \$107,432 per year. Nondiscretionary bonus payments, incentive payments and commissions may be used for up to 10% of the required minimum salary level if they are paid on an annual basis.

The DOL estimates that 1.2 million additional workers will be entitled to minimum wage and overtime pay as a result of the increase to the standard salary level. The DOL also estimates that an additional 101,800 workers will be entitled to overtime pay as a result of the increase to the HCE compensation level.

Issuance of the final overtime rule, however, has little, if any, effect on employers in New York State. Despite these changes at the federal level, employers in states such as New York are covered by even higher minimum salary requirements that already exceed the federal rates, and in 2020, these pay requirements will also change. As of January 1, 2020, New York State employers must pay exempt employees substantially higher minimum salaries than those set by the DOL, or those employees may be eligible for overtime pay under New York State Law for all hours actually worked over 40 hours in any given workweek.

Currently, under New York law, the minimum exempt weekly salary is 75 times the minimum wage. Since New York State has adopted different minimum wages for different geographic areas, here are the minimum exempt salaries as of January 1, 2020:

- The minimum annual salary for exempt employees for all New York City employers will increase to \$58,500 or \$1,125 per week;
- The minimum annual salary for exempt employees in Nassau, Suffolk and Westchester Counties will increase to \$50,700 or \$975 per week; and
- The minimum salary for exempt employees in all other New York counties will increase to \$46,020 or \$885 per week.

*Unlike in New York, issuance of the DOL’s final overtime rule may have a significant effect in states that do not have higher minimum exempt salaries. Employers are urged to check the laws in the states where they are doing business to ensure compliance with both federal and state law.

Non-Compliance and Enforcement of Minimum Wage Law

An employer that violates the minimum wage law may be subject to action in civil court, and also may be subject to criminal prosecution and penalties. The New York State Department of Labor may also require an employer to

pay minimum wage underpayments and liquidated damages plus interest and civil penalties of up to 200 percent of the unpaid wages. Attorneys' fees are also available.

Especially in light of the influx of increases over the last few years, it is critical that employers properly determine the minimum wage in their place of business and properly classify employees. Employers should review and/or audit their compensation arrangements for each of their employees and their policies to ensure that they are complying with all applicable overtime, minimum wage payments and benefits, and wage and hour laws and regulations.

If you have questions regarding these provisions, or any other aspect of employment law, please contact Hayley B. Dryer at hdryer@cullenllp.com or (516) 357-3745, or Thomas B. Wassel at twassel@cullenllp.com or (516) 357-3868, or James G. Ryan at jryan@cullenllp.com or (516) 357-3750.

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