

Important Overtime Developments—and Why New York State Employers May Not Care

March 11, 2019

The United States Department of Labor (“DOL”) has announced new proposed rules regarding overtime exemptions. While this will be important in many states, the new rules will have little to no effect in the State of New York.

First, some basic background. Under both the Federal Fair Labor Standards Act (“FLSA”) and New York State Labor Law, all employees are required to be paid time and one-half their regular rate of pay if they work more than 40 hours in a week, unless they fall into an “exempt” classification. To be exempt, the employee must meet three tests:

1. Be salaried (“the salary basis test”), which means the amount of weekly compensation is not reduced based on the number of hours worked that week, with some exceptions (contrary to popular belief, being salaried in and of itself does not make an employee exempt; the other tests must be met as well);
2. Earn the “minimum salary” required to be exempt; and
3. Meet the “duties test”, which requires the employee to work in an exempt classification. The main exempt employee classifications are executive (high-ranking decision makers), administrative (involved in the operation of the business, such as HR, accounting, etc.), and professional (requiring a course of prolonged study usually requiring a degree).

Under current Federal law, the “minimum salary” test only requires exempt employees to earn at least \$455 per week, the equivalent of \$23,660 per year. Three years ago, the DOL under President Obama proposed increasing the minimum salary to \$913 per week, or around \$47,000 per year. This proposed rule was challenged and enjoined in the courts and was allowed to die by the DOL under President Trump. Now the DOL has proposed a new increase in the minimum salary to \$679 per week, the equivalent of \$35,308 per year.

For most employers in the State of New York, however, this is much ado about nothing. New York has imposed a higher minimum salary for most exempt employees for years, and the proposed Federal salary level will still be less than New York requires. 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 for 2019:

	Minimum Wage	Minimum Exempt Weekly Salary
New York City—11 or more employees	\$15.00	\$1,125.00

New York City—10 or fewer employees	\$13.50	\$1,012.50
Long Island and Westchester	\$12.00	\$900.00
All other areas	\$11.10	\$832.50

Executive and administrative employees earning less than the minimum weekly salaries above are NOT exempt, no matter their duties. Oddly, New York does not have a minimum salary for professional employees, so the increase in the Federal minimum will affect those employees, although most professionals probably earn more than those minimums already.

In states which do not have higher minimum exempt salaries, the proposed rule will matter. For example, Connecticut's minimum exempt salary requirement is \$475 per week, higher than the current Federal minimum but less than the proposed Federal minimum. New Jersey has no minimum salary of its own, and follows the Federal rule. Please check the laws in the state where you do business to be sure you are in compliance.

Finally, this proposed rule will be subject to public comment and review by the DOL. Once the rule is finalized several months from now, it is likely to be challenged in the courts again. Whether the 2020 elections will have an effect on the proposal also remains to be seen.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of employment law, please contact Thomas B. Wassel at (516) 357-3868 or twassel@cullenanddykman.com, or Gary Fishberg at (516) 357-3703 or gfishberg@cullenanddykman.com.

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