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New York Issues Final Minimum Wage Regulations Impacting Minimum Salary for Exempt Employees - Effective 12/31/16

The New York State Department of Labor has adopted regulations implementing increases to the state minimum wage, identified required salary levels for exclusions from overtime pay for executive and administrative employees, and issued Frequently Asked Questions for employers. The new regulations are effective on December 31, 2016.

Minimum Wage Increases

On December 28, 2016, only a few days before New York's minimum wage increases take effect on December 31, 2016, the New York State Department of Labor (NYSDOL) issued final regulations implementing changes resulting from the increases to the minimum wage. The new minimum wage law, for the first time, fractures the State into three different geographical regions (each with a separate minimum wage), as well as sets different minimum wage rates for employers in New York City that depend on the size of the employer and whether the employer is deemed a fast food employer.

The Minimum Wage rates are scheduled to increase each year on 12/31 until they reach \$15.00 per hour.

Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Large Employers (of 11 or more)	\$11.00	\$13.00	\$15.00			
NYC - Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State	\$9.70	\$10.40	\$11.10	\$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 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.

Industry Specific Minimum Wage Information (including tip credits and allowance for meals and uniforms).

The regulations known as 'Wage Orders' set certain requirements that are industry-specific. The rates contained in these Wage Orders may differ from the general Minimum Wage rates above. For details, please see the wage order summaries below.

[Summary of Wage Order Rates and Credits for the Hospitality Industry \(includes fast food workers\)](#)

[Summary of Wage Order Rates and Allowances for the Building Service Industry](#)

[Summary of Wage Order Rates and Allowances for Miscellaneous Industries and Occupations](#)

[Summary of Wage Order Rates and Allowances for Farm Workers](#)

NYS DOL Tool

[Click here](#) to access a NYS DOL tool to help determine the minimum cash wage to be paid to an employee.

Poster Requirement

Employers must post a Minimum Wage Information poster in their establishment. The new posters may be downloaded from the NYS DOL site (see Postings / Fact Sheets). [Click here](#) to access the site. To order new posters through ADP TotalSource select the HR Tab on My TotalSource and click "Poster Ordering" under HR Quick Links.

Minimum Salary for Overtime Exempt Administrative and Executive Employees

The final regulations include increases to the salary level requirement for exclusions from the overtime pay requirement for administrative and executive employees under State law. The federal Department of Labor had issued regulations increasing the salary level for exempt employees under federal law, but as we previously reported, a Texas federal district court issued a nationwide preliminary injunction enjoining the USDOL from implementing the regulations. The federal salary level (\$913.00 per week) would have exceeded the New York salary level, making the New York salary level irrelevant for employers covered by federal law. With the federal regulations in limbo, however, employers in New York must ensure compliance with New York State law, which sets salary levels ranging from \$727.50 to \$825.00 per week, depending on where the employee works as follows:

Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Large Employers (of 11 or more)	\$825.00	\$975.00	\$1,125.00			
NYC - Small Employers (10 or less)	\$787.50	\$900.00	\$1,012.50	\$1,125.00		
Nassau, Suffolk, Westchester Counties	\$750.00	\$825.00	\$900.00	\$975.00	\$1,050.00	\$1,125.00
Other NY counties	\$727.50	\$780.00	\$832.00	\$885.00	\$937.50	

Frequently Asked Questions

The NYS DOL has also published "[Frequently Asked Questions](#)" addressing a number of important issues.

Where the Work is Performed

If an employer is located in New York City, but has employees located throughout New York, the NYSDOL explains that the applicable minimum wage is based upon where an employee performs the work, not where the employer is located. If an employee works in multiple geographic regions with different applicable minimum wage rates, the employer may pay either the highest rate for all hours worked or the applicable rate for each hour worked in each region.

The FAQs do not explain, however, what rates apply to employees who work less than a full hour in any particular region. For example, an employee may travel from Long Island to Westchester, spending 25 minutes in traveling time in Queens and the Bronx. Must the employee receive the New York City rate for the short period spent traveling through New York City? The FAQs do not address situations where employees spend short periods of time in geographic regions with a higher minimum wage rate. The safest course of action would be to assume that the higher rate applies for time spent in the higher rate jurisdiction.

New York City “Large” Employer

Different minimum wage and salary rates apply in New York City depending on the size of the employer. Whether a New York City-based employer is “large” or “small” will be based on the business as a whole during the current or preceding year, not the number of employees employed only in New York City.

According to the FAQs, a “large” employer is any business that employs at least one employee in New York City and has employed more than 10 employees (total of 11) at any time during the current or prior calendar year and among all worksites. A “small employer” is any business that employs at least one employee in New York City and has not employed more than 10 employees (total of 11) at any time during the current or prior calendar year among all worksites. Employees of a New York City “large” employer who perform work outside of New York City, however, need not be paid the higher minimum wage for times during which the employee works outside New York City.

If the employer begins the year with fewer than 11 employees, but then reaches the 11-employee threshold during the year, the higher minimum wage rate will apply for the remaining portion of the year and the next calendar year. Further, all employees, whether part-time or full-time, are counted. Finally, there is no exception for seasonal employers, according to the NYSDOL.

Additional Recordkeeping

For employers who pay different minimum wage rates to the same employee depending on where the work is performed, employers will have additional recordkeeping requirements. The NYSDOL explains that employers must record each hour worked at each rate and identify the rate of pay for the employee on the employee’s pay stub. “Employers may provide separate notices for each region, job site, job title and pay rate, or the employer may include a listing of all rates on a single employee pay notice,” according to NYSDOL.

Questions?

Please contact the Wage and Hour Center of Excellence at Totalsource.FLSA@adp.com or 1-866-400-6011 (option 6) or your Human Resources Business Partner if you have any questions.