

## NYDOL Issues New Wage Regulations

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Although, as we previously reported, the Department of Labor's new overtime final rule remains in limbo as a result of a federal injunction, the New York Department of Labor (NYDOL) has proceeded with issuing its own final regulations regarding the salary threshold for certain exemptions. On December 28, 2016, the NYDOL amended its minimum wage orders to increase both the minimum wage and the minimum salary basis for executive and administrative employees relating to exemptions from overtime pay. The amendments, which were adopted in April 2016 and went into effect December 31, 2016, implemented gradual increases, based both the size of the employer and the work location of the employee, over the next several years. . .

### Minimum Wage Increases

The new regulations amended the New York wage order that is generally applicable to "miscellaneous industries and occupations," as well as the wages orders specific to the building service industry, the hospitality industry, farm workers, and certain non-profits, to provide that the basic minimum hourly wage rate is as:

#### **Large employers in New York City (10 or more employees)**

- \$11.00 per hour on and after December 31, 2016
- \$13.00 per hour on and after December 31, 2017
- \$15.00 per hour on and after December 31, 2018

#### **Small employers New York City (10 or fewer employees)**

- \$10.50 per hour on and after December 31, 2016
- \$12.00 per hour on and after December 31, 2017
- \$13.50 per hour on and after December 31, 2018
- \$15.00 per hour on and after December 31, 2019

### **Remainder of Downstate (Nassau, Suffolk, and Westchester counties)**

- \$10.00 per hour on and after December 31, 2016
- \$11.00 per hour on and after December 31, 2017
- \$12.00 per hour on and after December 31, 2018
- \$13.00 per hour on and after December 31, 2019
- \$14.00 per hour on and after December 31, 2020
- \$15.00 per hour on and after December 31, 2021

### **Remainder of State (outside of New York City and Nassau, Suffolk, and Westchester counties)**

- \$9.70 per hour on and after December 31, 2016
- \$10.40 per hour on and after December 31, 2017
- \$11.10 per hour on and after December 31, 2018
- \$11.80 per hour on and after December 31, 2019
- \$12.50 per hour on and after December 31, 2020

Fast food workers, regardless of the size of the employer, are instead entitled to the following minimum wage:

#### **In New York City**

- \$12.00 per hour on and after December 31, 2016
- \$13.50 per hour on and after December 31, 2017
- \$15.00 per hour on and after December 31, 2018

#### **Outside of New York City**

- \$10.75 per hour on and after December 31, 2016
- \$11.75 per hour on and after December 31, 2017
- \$12.75 per hour on and after December 31, 2018
- \$13.75 per hour on and after December 31, 2019
- \$14.50 per hour on and after December 31, 2020
- \$15.00 per hour on and after July 1, 2021

According to the NYDOL's published Frequently Asked Questions (FAQs) addressing the changes, a particular minimum wage is based on where an employee performs work regardless of where the main office of his or her employer is located. Therefore, if for example, an employee of a large New York City employer performs work in Suffolk County, the employee should be paid the Suffolk rate. Significantly, the NYDOL notes that an employee may be paid two distinct wage rates if he or she works in two different regions. In such cases, the employee's paystub must reflect each hour worked at each rate and identify the applicable rate of pay.

## **Salary Threshold Increases**

Keeping in line with the minimum wage increases—so that the salary threshold for administrative and executive employees in order to be classified as exempt from various wage orders remains 75 times the hourly minimum wage—the New York salary threshold for these exemptions was increased to the following:

### **Large employers in New York City (10 or more employees)**

- \$825.00 per week on and after December 31, 2016
- \$975.00 per week on and after December 31, 2017
- \$1,125.00 per week on and after December 31, 2018

### **Small employers New York City (10 or fewer employees)**

- \$787.50 per week on and after December 31, 2016
- \$900.00 per week on and after December 31, 2017
- \$1,012.50 per week on and after December 31, 2018;
- \$1,125.00 per week on and after December 31, 2019

### **Remainder of downstate (Nassau, Suffolk, and Westchester counties)**

- \$750.00 per week on and after December 31, 2016
- \$825.00 per week on and after December 31, 2017
- \$900.00 per week on and after December 31, 2018
- \$975.00 per week on and after December 31, 2019
- \$1,050.00 per week on and after December 31, 2020
- \$1,125.00 per week on and after December 31, 2021

### **Remainder of state (outside of New York City, Nassau, Suffolk, and Westchester counties)**

- \$727.50 per week on and after December 31, 2016
- \$780.00 per week on and after December 31, 2017
- \$832.00 per week on and after December 31, 2018
- \$885.00 per week on and after December 31, 2019
- \$937.50 per week on and after December 31, 2020

As with the minimum wage rate, the minimum salary amount that must be paid to exempt administrative and executive employees varies both by the employer's size and location(s) in which the employee performs work. The amended regulations also provide for proportionate increases in the allowances or credits permitted under various wages orders for meals and lodging, tips, uniforms, and utilities,

Given these regulatory updates, employers should (1) post the applicable NYDOL notice summarizing the new minimum wage provisions in a conspicuous place; (2) conduct annual internal pay audits, with close attention to minimum wage workers; (3) ensure compensation levels are adjusted to comply with the new exemption thresholds; and (4) continue to monitor minimum wage requirements set forth by any applicable local ordinances to ensure compliance with unique minimum wage requirements that exceed even the new state standards.

The full texts of the amended wage orders and the NYDOL FAQs, may be reviewed [here](#).

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