

NEW YORK PROPOSES INCREASES TO MINIMUM SALARY THRESHOLDS FOR EXEMPT EMPLOYEES

Labor & Employment Alert
October 28, 2016

As expected, the New York State Department of Labor has announced increases to the minimum salary thresholds for employees who are exempt from the New York minimum wage and overtime requirements under the administrative and executive exemptions. These increases are being proposed in accordance with Section 652(2) of the New York Labor Law, which requires the Commissioner of Labor to increase the minimum salary thresholds in the same proportion as increases to the State minimum wage.

Beginning on December 31, 2016, employers would be required to pay the following minimum salaries to their New York employees who are classified as exempt under the administrative or executive exemptions in order to retain their exempt status:

Large Employers (11 or more employees) in New York City

- \$825.00 per week on and after 12/31/16
- \$975.00 per week on and after 12/31/17
- \$1,125.00 per week on and after 12/31/18

Small Employers (10 or fewer employees) in New York City

- \$787.50 per week on and after 12/31/16
- \$900.00 per week on and after 12/31/17
- \$1,012.50 per week on and after 12/31/18
- \$1,125.00 per week on and after 12/31/19

Employers in Nassau, Suffolk, and Westchester Counties

- \$750.00 per week on and after 12/31/16
- \$825.00 per week on and after 12/31/17

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- \$900.00 per week on and after 12/31/18
- \$975.00 per week on and after 12/31/19
- \$1,050.00 per week on and after 12/31/20
- \$1,125.00 per week on and after 12/31/21

Employers Outside of New York City, Nassau, Suffolk, and Westchester Counties

- \$727.50 per week on and after 12/31/16
- \$780.00 per week on and after 12/31/17
- \$832.00 per week on and after 12/31/18
- \$885.00 per week on and after 12/31/19
- \$937.50 per week on and after 12/31/20

This is the first time that the minimum salary levels will vary based upon geographic region. The new rules, however, do not address a key issue this raises, namely, which minimum salary level applies to employees who work in two or more regions with different minimum salary levels. For example, it is not clear which salary level would apply to an employee who works for his or her employer at its office in New York City but who also frequently works from his or her home in Nassau County. Hopefully, the Department of Labor will provide clarity on this point in its final rulemaking.

Under the new rules, the impact of the minimum salary increases would vary, depending on the type of employer at issue. “Large” New York City employers that will be subject to the new \$913 minimum salary level under changes to the federal overtime rule (effective December 1, 2016) will be subject to an even higher minimum salary requirement as of December 31, 2017. At that time, “large” New York City employers will be required to pay employees who are exempt under the administrative or executive exemptions at least \$975 per week to maintain their exempt status. “Small” New York City employers will surpass the increased federal minimum salary level of \$913 on December 31, 2018, when the minimum salary level will increase to \$1,012.50 per week for employees who are exempt under the administrative or the executive exemption.

Also, most New York not-for-profit employers who are not covered by the Fair Labor Standards Act – and therefore do not have to pay their exempt employees \$913 per week starting on December 1, 2016 – would be required to pay employees who are classified as exempt under the administrative or executive exemptions in accordance with the heightened New York State minimum salary requirements.

The Department of Labor will receive public comments about its proposal to increase the minimum salary levels until December 3, 2016. We will provide more information as it becomes available. In the meantime, please contact any one of our labor and employment attorneys if you have questions about this alert.