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NEW YORK PROPOSES INCREASE TO MINIMUM SALARY LEVEL FOR EXEMPT EMPLOYEES

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As detailed in a previous [alert](#), starting on December 1, 2016, the federal minimum salary level to classify employees as exempt from overtime will increase from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). It is imperative for employers to finalize all exemption analysis by that date.

New York employers, however, may soon face a higher salary threshold than the newly increased federal standard to properly pay executive, administrative and other exempt employees a flat salary. The proposed modifications, which will almost certainly go into effect, set the minimum salary levels for exempt status at 75 times New York State's minimum wage. Additionally, the salary levels will increase proportionally over the years as the state increases the minimum hourly wage. Under the new proposed Wage Orders, New York City employers with more than 10 employees will see the minimum salary requirement surpass the federal standard on December 31, 2017. The charts below summarize the minimum salaries that employers will have to pay exempt employees:

New York City Large Employers (11 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

New York City Small Employers (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 the 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

Please also note that employees must still meet strict “duties” requirements governing exempt employees in order to legally pay a salary and avoid overtime claims. Again, it is important to note that under the Hospitality Wage Order in particular, employees may not be paid on a salary (or shift) basis unless they meet the rigid exemption rules. In addition to the minimum salary increases, there are also proposed increases to uniform allowances, tip credits and meal credits as outlined below.

Uniform Allowance

When an employer does not launder or maintain required employee uniforms, employers must pay the weekly allowances listed below in addition to the employee’s regular wage, based on the number of hours worked per week. The High Rate applies to employees who work more than 30 hours per week, the Medium Rate applies to employees who work more than 20 but less than 30 hours per week and the Low Rate applies to employees who work 20 hours or less per week.

New York City Large Employers (11 or More Employees):

High (30+ Hours)	Medium (20-30 Hours)	Low (Less than 20 Hours)	New Rate Effective On and After
\$13.70	\$10.80	\$6.55	December 31, 2016
\$16.20	\$12.80	\$7.75	December 31, 2017
\$18.65	\$14.75	\$8.90	December 31, 2018

New York City Small Employers (10 or Fewer Employees):

High (30+ Hours)	Medium (20-30 Hours)	Low (Less than 20 Hours)	New Rate Effective On and After
\$13.05	\$10.35	\$6.25	December 31, 2016
\$14.95	\$11.80	\$7.15	December 31, 2017
\$16.80	\$13.30	\$8.05	December 31, 2018
\$18.65	\$14.75	\$8.90	December 31, 2019



Remainder of Downstate (Nassau, Suffolk and Westchester Counties):

High (30+ Hours)	Medium (20-30 Hours)	Low (Less than 20 Hours)	New Rate Effective On and After
\$12.45	\$9.85	\$5.95	December 31, 2016
\$13.70	\$10.80	\$6.55	December 31, 2017
\$14.95	\$11.80	\$7.15	December 31, 2018
\$16.20	\$12.80	\$7.75	December 31, 2019
\$17.40	\$13.75	\$8.30	December 31, 2020
\$18.65	\$14.75	\$8.90	December 31, 2021

Remainder of the State (Outside of New York City, Nassau, Suffolk and Westchester Counties):

High (30+ Hours)	Medium (20-30 Hours)	Low (Less than 20 Hours)	New Rate Effective On and After
\$12.05	\$9.55	\$5.75	December 31, 2016
\$12.95	\$10.25	\$6.20	December 31, 2017
\$13.80	\$10.90	\$6.60	December 31, 2018
\$14.70	\$11.60	\$7.00	December 31, 2019
\$15.55	\$12.30	\$7.45	December 31, 2020

Tip Credit

The tip credit that employers can take against the minimum wage for food service workers who customarily and regularly receive tips will also increase yearly and vary across the state. The charts below detail the Hospitality Wage Order's proposed increases.

New York City Large Employers (11 or More Employees):

Cash Wage	Tip Credit	Total	New Rate Effective On and After
\$7.50	\$3.50	\$11.00	December 31, 2016
\$8.65	\$4.35	\$13.00	December 31, 2017
\$10.00	\$5.00	\$15.00	December 31, 2018



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New York City Small Employers (10 or Fewer Employees):

Cash Wage	Tip Credit	Total	New Rate Effective On and After
\$7.50	\$3.00	\$10.50	December 31, 2016
\$8.00	\$4.00	\$12.00	December 31, 2017
\$9.00	\$4.50	\$13.50	December 31, 2018
\$10.00	\$5.00	\$15.00	December 31, 2019

Remainder of Downstate (Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Total	New Rate Effective On and After
\$7.50	\$2.50	\$10.00	December 31, 2016
\$7.50	\$3.50	\$11.00	December 31, 2017
\$8.00	\$4.00	\$12.00	December 31, 2018
\$8.65	\$4.35	\$13.00	December 31, 2019
\$9.35	\$4.65	\$14.00	December 31, 2020
\$10.00	\$5.00	\$15.00	December 31, 2021

Remainder of State (Outside of New York City, Nassau, Suffolk and Westchester Counties):

Cash Wage	Tip Credit	Total	New Rate Effective On and After
\$7.50	\$2.20	\$9.70	December 31, 2016
\$7.50	\$2.90	\$10.40	December 31, 2017
\$7.50	\$3.60	\$11.10	December 31, 2018
\$7.85	\$3.95	\$11.80	December 31, 2019
\$8.35	\$4.15	\$12.50	December 31, 2020



Meal Credit

Similarly, under the Hospitality Wage Order, the meal credit allowances will change as outlined below for food service workers, service workers and other nonservice workers.

New York City Large Employers (11 or More Employees):

Food Service	Service	Other	New Rate Effective On and After
\$2.85	\$3.05	\$3.80	December 31, 2016
\$3.25	\$3.60	\$4.50	December 31, 2017
\$3.60	\$4.15	\$5.15	December 31, 2018

New York City Small Employers (10 or Fewer Employees):

Food Service	Service	Other	New Rate Effective On and After
\$2.80	\$2.90	\$3.60	December 31, 2016
\$3.05	\$3.35	\$4.15	December 31, 2017
\$3.35	\$3.75	\$4.65	December 31, 2018
\$3.60	\$4.15	\$5.15	December 31, 2019

Remainder of Downstate (Nassau, Suffolk and Westchester Counties):

Food Service	Service	Other	New Rate Effective On and After
\$2.70	\$2.80	\$3.45	December 31, 2016
\$2.85	\$3.05	\$3.80	December 31, 2017
\$3.05	\$3.35	\$4.15	December 31, 2018
\$3.25	\$3.60	\$4.50	December 31, 2019
\$3.45	\$3.90	\$4.80	December 31, 2020
\$3.60	\$4.15	\$5.15	December 31, 2021



Remainder of State (Outside of New York City, Nassau, Suffolk and Westchester Counties):

Food Service	Service	Other	New Rate Effective On and After
\$2.65	\$2.70	\$3.35	December 31, 2016
\$2.75	\$2.90	\$3.60	December 31, 2017
\$2.90	\$3.10	\$3.80	December 31, 2018
\$3.00	\$3.30	\$4.05	December 31, 2019
\$3.15	\$3.45	\$4.30	December 31, 2020

New York employers will need to comply with the federal salary minimums as well as the steadily increasing state minimums over the next several years. Employers should work closely with counsel in order to properly implement these regulations.

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