

### Start Spreading the News: The Minimum Wage is Up in New York

On December 28, 2016, the New York State Department of Labor [adopted regulations](#) implementing minimum wage increases that Governor Andrew Cuomo [signed into law](#) earlier in the year. Starting on December 31, 2016, the minimum wage increased to \$11 for large employers in New York City, and to \$10.50 for most other New York City employers with fewer than eleven employees. Employers outside of New York City also are affected; the minimum wage increased to \$9.70 for work performed in most other parts of the state. The regulations provide for more increases next year, and these increases will continue until the minimum wage reaches \$15 across the state.

While a Texas federal judge's ruling has halted, for the time being, an increase in the salary threshold for exemption under the Fair Labor Standards Act,<sup>1</sup> New York has pressed forward and increased its own threshold. The minimum salary for overtime pay exemption in New York now ranges from \$727.50 to \$825.00 per week, depending on employer size and location. New York employers must comply with New York law, even though the changes to the federal law are in flux.

#### Minimum Wage Increases

New York is one of several states and cities that have moved to increase the minimum wage to \$15 per hour, but the change is being unrolled slowly to give employers time to adjust. Under the rules adopted by the State Department of Labor, the increase will be phased in over several years, and annual wage increases will vary depending on where an employee performs work. The first phase of minimum wage increases became effective on December 31, 2016.

##### *New York City*

For employees who work in New York City, the minimum wage depends upon the size of the employer. For "large" employers (*i.e.*, those with eleven or more employees), the minimum wage increased to \$11 as of December 31, 2016. At the end of 2017, the minimum wage will increase again to \$13 per hour. And, at the end of 2018, the minimum wage will increase to \$15 per hour. For "small" employers (*i.e.*, those with ten or fewer employees), the minimum wage increased to \$10.50 as of December 31, 2016, and will increase each year by \$1.50 until it reaches \$15 at the end of 2019.

In determining whether an employer is "large" or "small," the employer must use its highest total number of employees (part-time and full-time) at any time during the current or prior calendar year across all worksites, not just New York City. If an employer employed 11 or more persons at any point during the current or prior calendar year, then the employer must pay the "large" employer rate throughout the current calendar year. As a result, an employer that ceases to employ 11 or more persons must wait a full calendar year before using the lower "small" employer rate.<sup>2</sup>

##### *Nassau, Suffolk, and Westchester Counties*

For employees who work in Nassau, Suffolk, and Westchester counties, regardless of the size of the employer, the minimum wage increased to \$10 per hour on December 31, 2016, and will increase each year by \$1 until it reaches \$15 at the end of 2021.

<sup>1</sup> *Important information regarding recent overtime litigation in the U.S. District Court of Eastern District of Texas*, U.S. DEP'T OF LABOR, <https://www.dol.gov/whd/overtime/final2016/litigation.htm> (last visited Dec. 29, 2016).

<sup>2</sup> *Minimum Wage*, N.Y. STATE DEP'T OF LABOR, <https://www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm> (last visited Dec. 29, 2016).

### *Remainder of the State*

In the rest of New York state, regardless of the size of the employer, the minimum wage increased to \$9.70 on December 31, 2016, and will increase each year by 70 cents until it reaches \$12.50 at the end of 2020. The minimum wage will then continue to increase, on an indexed schedule determined by the Director of the Division of Budget, until it reaches \$15.

If an employee performs work in two or more minimum wage regions (e.g., New York City and Westchester), the employer can choose to pay the highest rate for all hours worked, or pay for each hour worked in each region at the applicable rate for that region. If an employer chooses to pay an employee at multiple rates, each rate must appear on the employee's pay stub.<sup>3</sup>

### *Fast Food Workers*

New York increased the minimum wage for fast food workers in December 2015, and another annual increase went into effect on December 31, 2016. The minimum wage for fast food workers in New York City increased to \$12, and will continue to increase annually until it reaches \$15 at the end of 2018. In the rest of the state, the minimum wage for fast food workers increased to \$10.75, and will increase annually until it reaches \$15 in 2021.<sup>4</sup>

### **Overtime Threshold Increases**

The New York State Department of Labor adopted new wage orders that increased the weekly salary threshold for exemption from overtime pay for executive and administrative employees. The previous threshold was \$675 per week. Effective December 31, 2016, the new thresholds are as follows:

- *New York City*: \$825 per week (\$42,900 annually) for "large" employers (i.e., those with eleven or more employees), and \$787.50 per week (\$40,950 annually) for "small" employers (i.e., those with ten or fewer employees). These thresholds will increase annually until they reach \$1,125 per week (\$58,500 annually). That target is higher than the now-halted federal threshold (\$913 per week), and will be reached in December 2018 for "large" employers, and in December 2019 for "small" employers.
- *Nassau, Suffolk, and Westchester Counties*: \$750 per week (\$39,000 annually). This threshold will increase annually until it reaches \$1,125 per week (\$58,500 annually) in December 2021.
- *Remainder of the State*: \$727.50 per week (\$37,830 annually). This threshold will increase annually until it reaches \$937.50 per week (\$48,750 annually) in December 2020.<sup>5</sup>

### **Make a Brand New Start of It**

The following steps will help New York employers ensure compliance with the new minimum wage and overtime exemption regulations:

- Employers with one or more employees in New York City should determine whether they are "large" or "small" employers under the regulations.

<sup>3</sup> *Id.*

<sup>4</sup> *Minimum Wage for Fast Food Workers: Frequently Asked Questions*, N.Y. STATE DEP'T OF LABOR, <https://labor.ny.gov/workerprotection/laborstandards/workprot/MW%20Updates/fast-food-faq.shtm> (last visited Dec. 29, 2016).

<sup>5</sup> *Wage Order Summary: Miscellaneous Industry*, N.Y. STATE DEP'T OF LABOR, <https://www.labor.ny.gov/formsdocs/wp/Part142.pdf> (last visited Dec. 29, 2016).

- Determine the minimum wage regions in which employees actually perform work.
- Decide at what rate(s) to pay minimum-wage employees who work in multiple regions. If some employees will be paid at multiple rates, arrange with payroll vendors to reflect the multiple rates on those employees' pay stubs.
- With respect to administrative and executive employees currently making less than the new applicable salary threshold, determine whether to increase their salaries to the new threshold, or convert them to non-exempt employees who are eligible to receive overtime pay.
- Train human resources staff on the updates, provide proper notice of all changes to wages, and post minimum wage information posters.

The New York State Department of Labor has published a list of Frequently Asked Questions addressing the minimum wage and overtime threshold increases. It is available [here](#).

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

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