

## New year means new pay obligations for New York employers

As the holiday season and the new year approach, our minds naturally turn toward family, friends and holiday traditions. While they make their lists and check them twice, employers in New York state should be careful not to overlook the scheduled increases to minimum wage and minimum salary requirements for certain exempt employees they are required to give.

Effective December 31, 2021, the state minimum wage for employees located in New York state — but outside of New York City, Nassau County, Suffolk County, and Westchester County — will increase by 70 cents per hour, from \$12.50 to \$13.20 per hour. Within New York City and the aforementioned counties, the minimum wage will remain at or increase to \$15.00 per hour. This 70-cent increase in our part of the state is a big jump, so employers need to start their budgeting process now (or better, months ago) to ensure compliance.

Are you already paying your hourly workers over this increased minimum wage rate? Don't stop reading — there's more! Another, equally important — though less publicized — increase in pay requirement for many salaried employees is also scheduled to take effect.

As you are likely aware, under the federal Fair Labor Standards Act, certain employees are deemed "exempt" from overtime if their jobs require the performance of certain duties, and they are paid at least \$684.00 per week on a salary basis (approximately \$35,568 per year).

Less well-known, however, is that New York state mandates a significantly higher minimum salary for employees deemed exempt due to their duties as "Administrative" or "Executive" employees. Effective December 31, 2021, to remain exempt from overtime, these "Administrative" and "Executive" employees outside of New York City, Nassau County, Suffolk County, and Westchester County must receive a minimum weekly salary of \$990.00 per week, which breaks down to an annual salary of \$51,480. Within New York City and the aforementioned counties, the minimum salary required will remain at or increase to \$1,125.00 per week, approximately \$58,500 per year. Note that New York does not impose a minimum salary requirement for "Professional" exempt employees (e.g., accountants, architects, en-



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gineers, etc.), so employers generally just need to ensure compliance with the federal minimum of \$684.00 per week for them.

The required increase for "Administrative" and "Executive" employees in our region of the state constitutes a potential pay increase of over 5 percent, potentially leaving some employers with some very difficult decisions.

Let's walk through a quick scenario. Suppose that you employ a store manager in Rochester who regularly works over 40 hours a week and whose primary duties are to manage the business and supervise, hire, and discipline a team of several full-time employees. During 2021, you paid this supervisor a salary of \$49,000 per year.

Based on these facts alone, you can breathe easy, at least for 2021. The store manager likely performed the duties of an "Executive" employee under applicable law and received a weekly salary a smidge higher than the 2021 New York state minimum of \$937.50 per week.

However, 2022 presents a different and potentially problematic story. Here you are, getting ready for the holidays, sipping hot cocoa in front of your cozy fireplace, reading this column in the *Rochester Business Journal*, and you suddenly realize that you have not scheduled a salary increase for the store manager before December 31 of this year. What do you do?

Well, you basically have two options. Option 1 is to bump the store manager's annual salary up to at least \$51,480 and hope you have the money in your 2022 budget to cover it. Of course, the regional manager, to whom the store manager reports, and who makes \$51,500 a year, will likely complain about the store manager receiving the same pay, which can lead to a cascade of pay adjustments and complaints about compression.

If you do not have the budget or stomach to grant the salary increase, then Option 2

is to simply stop treating the store manager as "exempt." In short, you can continue to pay the \$49,000 salary, but the store manager will now also be entitled to overtime.

Assuming you keep the store manager on a salary rather than converting to hourly, the overtime calculation can actually get quite confusing. To determine overtime, you will first need to calculate the manager's "regular rate of pay" (essentially the employee's total weekly remuneration, which can also include certain payments in addition to salary, divided by the total number of hours worked in such week) and then paying all hours over 40 at one and a half times the employee's "regular rate." Depending on the number of hours actually worked, that overtime rate can actually fluctuate wildly from week to week.

Even if you calculate overtime correctly, the cost of overtime could quickly exceed the salary bump you originally declined to provide. And if you can't afford the additional overtime, you will need to start limiting and closely monitoring the hours the store manager works, which will require extra effort and could create a negative work environment. In addition, converting the store manager to non-exempt has other unforeseen consequences. For example, the manager will now need to punch in and out each day, record all meal periods and hours worked, and may be ineligible for certain company benefit programs reserved for "exempt" employees.

There is an Option 3, but I hesitate to even mention it: simply ignore the salary increase requirement, continue to pay your employee below the salary threshold, and refuse to pay required overtime. Of course, I cannot recommend this option because it clearly violates the law. Also, after reading this column, the store manager will probably decide to sue you for unpaid overtime. Given that the damages for unpaid overtime in New York are astronomical, I promise that in the long run you will end up paying much more in damages and attorneys' fees than you would have paid out in the required salary increase — and that would ruin anyone's holiday season.

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