

LABOR AND  
EMPLOYMENT

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## New Year, New Wage: NYS Minimum Wage Rate and Minimum Salary Level for Exempt Employees Both Set to Increase on December 31, 2016

New York State employers will ring in the New Year with increases to the hourly minimum wage rate and minimum salary level for exempt employees. The increases will take effect Saturday, December 31, 2016.

In April, we reported on a series of increases to the hourly minimum wage ([see prior post](#)), and in November, we reported on proposed corresponding increases to the minimum salary level required to qualify for exempt executive and administrative status in New York ([see prior post](#)). As reported in the December 28, 2016 issue of the New York State Register, the New York State Department of Labor (NYS DOL) officially adopted the proposed increases and amended the minimum wage orders. The amendments will trigger a series of increases to the minimum wage rate and the minimum salary level that will continue through December 2021. A summary of the changes, which was compiled by the NYSDOL, can be found [here](#).

### Effective December 31, 2016:

- The hourly minimum wage will increase from \$9.00 per hour to \$9.70 per hour for employers outside of the New York City area (including New York City, Nassau, Suffolk, and Westchester counties). The hourly minimum wage will be higher in the New York City area.
- The minimum salary level required to qualify for exempt executive or administrative status will increase from \$675 per week to \$727.50 per week for employers outside of the New York City area. The required minimum salary will be higher for employers in the New York City area.

This update focuses on the increases as they affect employers covered by the “miscellaneous industries” wage order, which applies to employers not covered by one of the industry specific wage orders. Employers covered by industry specific wage orders, such as the wage orders for the hospitality or building services industries, or farm workers, should refer to the specific wage orders for those industries to determine what changes, if any, apply to their business.

### Hourly Minimum Wage Rate Increases

The hourly minimum wage is currently \$9.00 per hour across all of New York State. Beginning on December 31, 2016, the hourly minimum wage will vary based on an employer’s size and geographic location within the state, with annual increases through December 2021, according to the following schedule:

Effective Date	Outside NYC Area	Nassau, Suffolk, and Westchester Counties	NYC: Small Employers (10 or fewer employees)	NYC: Large Employers (11 or more employees)
December 31, 2016	\$9.70/hour	\$10.00/hour	\$10.50/hour	\$11.00/hour
December 31, 2017	\$10.40/hour	\$11.00/hour	\$12.00/hour	\$13.00/hour
December 31, 2018	\$11.10/hour	\$12.00/hour	\$13.50/hour	\$15.00/hour
December 31, 2019	\$11.80/hour	\$13.00/hour	\$15.00/hour	
December 31, 2020	\$12.50/hour	\$14.00/hour		
December 31, 2021	DOB to use indices to determine any increase	\$15.00/hour		



For purposes of determining the appropriate rate in New York City, each part-time employee counts as one single employee. For example, an employer with 11 part-time employees would be considered a large employer.

Determining the correct regional rate is crucial to complying with the new wage rates. In a Frequently Asked Questions publication, the NYSDOL stated that the required rate is determined based on the location where an employee performs his or her work, regardless of where the employer's main office is located. For example, an employee who telecommutes to work from New York City for an employer located in Rochester must receive the appropriate New York City minimum wage, because that is where the employee is performing the work.

Another potential issue created by the geographic rates is determining what rate applies when an employee works in different minimum wage regions. In this scenario, the employer has two options. It can pay the higher rate for all hours worked, or it can pay hours worked in each region at the applicable minimum wage rate for that region. If an employee performs work in two or more regions and incurs overtime, the regular rate of pay for overtime pay is calculated using a blended rate. For example, if an employee works 15 hours in Erie County, where the minimum rate is \$9.70, and 30 hours in Nassau County, where the minimum rate is \$10.00, the employee's blended regular rate is \$9.90:  $((\$9.70 \times 15 \text{ hours}) + (\$10.00 \times 30 \text{ hours})) / 45 \text{ hours}$ . The employee's overtime rate is \$14.85:  $\$9.90 \times 1.5$ .

### **Increases to Minimum Salary Level for Exempt Executive and Administrative Employees**

New York State employers also must comply with an increase to the minimum salary level required for exempt executive and administrative employees, which will take effect on December 31, 2016. These increases are separate from the federal increases that a Texas court blocked back in November. Note, the increases do not apply to the professional exemption, for which there is no salary requirement under New York State law.

Similar to the hourly minimum wage increases, the minimum salary level for exempt status will also vary based on an employer's size and geographic location within the state. The required minimum salary level will increase from the current rate of \$675 per week and continue to rise over the next several years according to the following schedule:

Effective Date	Outside NYC Area	Nassau, Suffolk, and Westchester Counties	NYC: Small Employers (10 or fewer employees)	NYC: Large Employers (11 or more employees)
December 31, 2016	\$727.50	\$750.00	\$787.50	\$825.00
December 31, 2017	\$780.00	\$825.00	\$900.00	\$975.00
December 31, 2018	\$832.00	\$900.00	\$1,012.50	\$1,125.00
December 31, 2019	\$885.00	\$975.00	\$1,125.00	
December 31, 2020	\$937.00	\$1,050.00		
December 31, 2021		\$1,125.00		

## Actions Required

In order to ensure compliance and implement the new wage rates employers should:

- Increase the hourly wage rate for any non-exempt employee whose salary falls below the new hourly minimum wage; and
- Increase the annual salary for any exempt executive or administrative employee whose salary falls below the new minimum required salary level.

When implementing these changes, employers should keep in mind that the applicable rate will be determined based on the location where the employee performs the work, rather than where the employer's office is located.

Please feel free to contact any member of our [Labor and Employment](#) practice group at (585) 232-6500 if you have questions about the minimum wage increases or minimum salary level increases and how they might affect your workplace. ■



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