

Insight

IN-DEPTH DISCUSSION

NOVEMBER 1, 2016

Proposed Amendment to New York State Wage Orders Set To Substantially Raise Salary Requirements For Exempt Employees

BY EMMA FURSLAND AND BRUCE R. MILLMAN

On October 19, 2016, the New York State Department of Labor (“NYSDOL”) published proposed new Wage Orders which, if enacted, will ultimately increase the salary requirements for exempt employees in New York State beyond even the increases under the Fair Labor Standards Act slated to go into effect on December 1, 2016. This could have significant implications for employers in New York.

If enacted, the proposed changes will increase the salary thresholds required to qualify as “exempt” from the Wage Orders’ definition of an “employee” entitled to overtime beginning December 31, 2016. The minimum thresholds will differ, depending on employer size and location. Thus, for the first time, the salary level required to be exempt from overtime will be different in different parts of the state.¹ The most significant change will be evident December 31, 2018, when the minimum salary for exempt executive and administrative employees² of “large” New York City employers will increase to \$1,125 per week, and thereby exceed the minimum salary for exemption under federal law by over \$200. The proposed Wage Orders will increase the salary threshold according to the following schedule³:

1 This is similar to the recently enacted increases in the minimum wage, which also vary by employer size and location. See Stephen Fuchs, [Minimum Wage Increases in New York: What Employers Should Know](#), Littler Insight (Apr. 18, 2016).

2 Note: there is no minimum salary requirement for professionals under the Wage Orders.

3 12 NYC.R.R. §§ 141-3.2(c)(1); 142-2.14(c)(4); 142-3.12(c)(2); 146-3.2(c)(1). The salary thresholds would increase in each of the commonly used wage orders (those for Building Services, the Hospitality Industry, Miscellaneous Industries, and Nonprofitmaking Institutions which certify they will pay the statutory minimum wage), but the levels would be the same for each.

New York CityLarge Employers of 11 or more employees

12/31/2016	\$825.00 per week
12/31/2017	\$975.00 per week
12/31/2018	\$1,125.00 per week

Small Employers of 10 or fewer employees

12/31/2016	\$787.00 per week
12/31/2017	\$900.00 per week
12/31/2018	\$1,012.50 per week
12/31/2019	\$1,125.00 per week

Nassau, Suffolk, and Westchester counties

12/31/2016	\$750.00 per week
12/31/2017	\$825.00 per week
12/31/2018	\$900.00 per week
12/31/2019	\$975.00 per week
12/31/2020	\$1,050.00 per week
12/31/2021	\$1,125.00 per week

Outside of Nassau, Suffolk, and Westchester counties

12/31/2016	\$727.50 per week
12/31/2017	\$780.00 per week
12/31/2018	\$832.00 per week
12/31/2019	\$885.00 per week
12/31/2020	\$937.50 per week

Hospitality Industry Increase to Uniform Maintenance Allowance

In addition to new salary requirements, the proposed amendments to the Hospitality Wage Order prescribe yearly increases to the uniform maintenance⁴ allowance beginning December 31, 2016, based on total weekly hours worked as well as size and location of the employer. These are detailed below in Table 1.

Recommendations

Employers may wish to comment on the proposed regulations, either individually or more anonymously through trade associations or chambers of commerce. Comments may be submitted in writing to Michael Paglialonga New York State Department of Labor, Building 12, Room 509, State Campus, Albany N.Y. 12240, or by email to regulations@labor.ny.gov. The comment period ends on December 3, 2016.

⁴ Maintaining required uniforms includes washing, ironing, dry cleaning, alterations, repair, or any other maintenance necessary.

Hospitality industry employers may need to immediately plan and budget for anticipated increases in uniform maintenance allowances that are likely to go into effect in barely a month.

As for exempt white collar employees, the good news is that for upstate employers (those outside of New York City and Nassau, Suffolk, and Westchester counties), the new salary level will not surpass the federal level of \$917 for the foreseeable future. Employers in Westchester, Nassau and Suffolk counties will have until December 2019 for this to occur, and NYC employers have until December 2018. However, employers that will be impacted by the new proposed regulations may want to take these anticipated increases into account now, while they are planning whether to increase salaries for, or reclassify, employees impacted by the new FLSA white collar regulations.⁵

Table 1: Uniform MAINTENANCE Allowance

New York City			
<u>Large Employers of 11 or more employees</u>			
	<i>High rate,</i>	<i>Medium rate,</i>	<i>Low rate,</i>
On or after December 31	(Paid, in addition to minimum wage, to employees who work in excess of 30 hours per week)	(Paid, in addition to minimum wage, to employees who work 20 – 30 hours per week)	(Paid, in addition to minimum wage, to employees who work fewer than 20 hours per week)
2016	\$13.70	\$10.80	\$6.55
2017	\$16.20	\$12.80	\$7.75
2018	\$18.65	\$14.75	\$8.90
<u>Small Employers of 11 or more employees</u>			
2016	\$13.05	\$10.35	\$6.25
2017	\$14.95	\$11.80	\$7.15
2018	\$16.80	\$13.30	\$8.05
2019	\$18.65	\$14.75	
Nassau, Suffolk, and Westchester counties			
	<i>High rate,</i>	<i>Medium rate,</i>	<i>Low rate,</i>
On or after December 31	(Paid, in addition to minimum wage, to employees who work in excess of 30 hours per week)	(Paid, in addition to minimum wage, to employees who work 20 – 30 hours per week)	(Paid, in addition to minimum wage, to employees who work fewer than 20 hours per week)
2016	\$12.45	\$9.85	\$5.95
2017	\$13.70	\$10.80	\$6.55
2018	\$14.95	\$11.80	\$7.15
2019	\$16.20	\$12.80	\$7.75
2020	\$17.40	\$13.75	\$8.30
2021	\$18.65	\$14.75	\$8.90

⁵ See Tammy McCutchen, et. al., [U.S. Department of Labor Publishes Final Rule on FLSA Overtime Regulations](#), Littler ASAP (May 12, 2016).

Outside of Nassau, Suffolk, and Westchester counties

	<i>High rate,</i>	<i>Medium rate,</i>	<i>Low rate,</i>
On or after December 31	(Paid, in addition to minimum wage, to employees who work in excess of 30 hours per week)	(Paid, in addition to minimum wage, to employees who work 20 – 30 hours per week)	(Paid, in addition to minimum wage, to employees who work fewer than 20 hours per week)
2016	\$12.05	\$9.55	\$5.75
2017	\$12.95	\$10.25	\$6.20
2018	\$13.80	\$10.90	\$6.60
2019	\$14.70	\$11.60	\$7.00
2020	\$15.55	\$12.30	\$7.45