

# Labor & Employment Law Alert: Happy Holidays? New York State Department of Labor Finalizes New Wage Orders

As expected, the New York State Department of Labor (NYSDOL) formally adopted new wage orders today which, among other things, set the minimum wage schedule and raised the minimum salary thresholds for executive and administrative positions to be considered exempt from overtime under New York Labor Law.

## ***Minimum Wage Schedule***

<b>Location</b>	<b>12/31/16</b>	<b>12/31/17</b>	<b>12/31/18</b>	<b>12/31/19</b>	<b>12/31/20</b>	<b>12/31/21</b>
NYC – Large Employers (11 or more)	\$11.00	\$13.00	\$15.00			
NYC – Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	*

\* Annual increases for the rest of the state will continue until the rate reaches \$15 minimum wage (and \$10 tipped wage). Starting 2021, the annual increases will be published by the Commissioner of Labor on or before October 1 and will be based on percentage increases determined by the Director of the Division of Budget, based on economic indices, including the Consumer Price Index.

The new minimum wage posters, which must be displayed by December 31, 2016, can be found here: <https://labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>.

The NYSDOL's final rule also adopts other proportional increases relating to tipped wages, meal and lodging allowances, and more.

## ***Minimum Salary Thresholds for Exempt Employees***

Effective December 31, 2016, the new weekly salary thresholds in New York are as follows:

<b>Location</b>	<b>12/31/16</b>	<b>12/31/17</b>	<b>12/31/18</b>	<b>12/31/19</b>	<b>12/31/20</b>	<b>12/31/21</b>
NYC – Large Employers (11 or more)	\$825.00	\$975.00	\$1,125.00			

NYC – Small Employers (10 or less)	\$787.50	\$900.00	\$1,012.50	\$1,125.00		
Remainder of Downstate*	\$750.00	\$825.00	\$900.00	\$975.00	\$1,050.00	\$1,125.00
Remainder of New York State	\$727.50	\$780.00	\$832.00	\$885.00	\$937.50	

\* Nassau, Suffolk and Westchester counties.

Employers whose exempt executive and administrative employees are currently paid less than the applicable new salary threshold must increase those salaries to the new minimum beginning with the pay period covering December 31, 2016. The salary may not be prorated for the workweek in which December 31 falls, even though the wage orders were not finalized until today, or else the affected employees will lose the exemption for the workweek. Alternatively, employers may convert exempt employees earning less than the new salary threshold to non-exempt beginning with the first day of the workweek in which December 31 falls.

Please note that the United States Department of Labor overtime rule, which was recently enjoined by a federal court in the Eastern District of Texas and pending appeal at the Fifth Circuit Court of Appeals, has no impact on the New York State salary threshold increases. In other words, regardless of whether the federal rule ever takes effect, employers in New York State must comply with these new wage orders.

The New York State minimum wage and overtime requirements do not cover federal, state and local government employers. However, in addition to private sector employers generally, the law does apply to charter schools, private schools, not-for-profit corporations, and non-teachers working for school districts.

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