

January 10, 2017

UPDATED: PAY ATTENTION TO PAY PRACTICES!
New Minimum Wage, Salary Threshold, and EE0-1 Reporting

Minimum Wage Increase

The minimum hourly wage for all employees, including those employed by nonprofits, will rise in stages over the next few years, until it hits \$15.00. For the first time, the minimum wage increases will be adjusted differently depending on the size of the employer and the location of the employees. “Large Employers” are those with more than 10 employees, whether or not all employees work in New York City, in both the current and prior calendar year. However, only those employees working within New York City need be paid at the Large Employer rate.

For employers in New York City:

Effective Date	Large Employers: 11 or more Employees	Small Employers: 10 or Fewer Employees
December 31, 2016	\$11.00/hr	\$10.50/hr
December 31, 2017	\$13.00/hr	\$12.00/hr
December 31, 2018	\$15.00/hr	\$13.50/hr
December 31, 2019		\$15.00/hr

For all employers in Westchester, Nassau, and Suffolk Counties:

Effective December 31, 2016: \$10/hr, increasing by \$1 each year until reaching \$15/hr on or after December 31, 2021.

For all employers in all other parts of New York State:

Effective December 31, 2016: \$9.70/hr, increasing by \$0.70 each year until reaching \$12.50/hr on or after December 31, 2020.

If the federal minimum wage is raised above these levels, the federal rate will apply.

The NYS Department of Labor has issued a helpful FAQ at the bottom of its website page describing the new minimum wage rules:

<https://www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>

The FAQ detailed information about how the Department of Labor is interpreting the new law, including:

- An employer is “Large” as soon as it has eleven employees. Even if the number of employees falls below eleven later that year, the employer will have to wait until the next calendar year to apply the Small Employer rate.
- The appropriate geographical rate is the rate for the area where the employee performs the work, not the area where the employer is located.
- If an employee works in more than one geographical area during the same week, an employer must pay either i) the highest rate for all hours worked, or ii) apply the appropriate rate for the hours worked in each area. In the latter case, overtime may be paid at a blended rate.
- Part-time employees are counted toward the number to determine whether an employer is “Large” or “Small.”

Increase in the Salary Threshold for Overtime Exemption

Just days before their effective date, the New York State Department of Labor (“DOL”) has issued final rules increasing the salary threshold for determining whether an employee is exempt from the requirement to receive overtime. As expected, the final rules are unchanged from the proposed rules. The new salary thresholds, like the minimum wage, are adjusted for geographic location and size of the employer.

The following salary thresholds apply to Executive and Administrative Employees (there is no salary threshold for Professional Employees):

For employers in New York City:

Effective Date	Large Employers: 11 or more Employees	Small Employers: 10 or Fewer Employees
December 31, 2016	\$825.00/week \$42,900/yr	\$787.50/week \$40,950/yr
December 31, 2017	\$975.00/week \$50,700/yr	\$900.00/week \$46,800/yr
December 31, 2018	\$1,125.00/week \$58,500/yr	\$1,012.50/week \$52,650/yr
December 31, 2019		\$1,125.00/week \$58,500/yr

For all employers in Westchester, Nassau, and Suffolk Counties:

Effective Date	
December 31, 2016	\$750.00/week \$39,000/yr
December 31, 2017	\$825.00/week \$42,900/yr
December 31, 2018	\$900.00/week \$46,800/yr
December 31, 2019	\$975.00/week \$50,700/yr
December 31, 2020	\$1,050.00/week \$54,600

December 31, 2021	\$1,125.00/week \$58,500/yr
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For all employers in all other parts of New York State:

Effective Date	
December 31, 2016	\$725.50/week \$37,726/yr
December 31, 2017	\$780.00/week \$40,560/yr
December 31, 2018	\$832.00/week \$43,264/yr
December 31, 2019	\$885.00/week \$46,020/yr
December 31, 2020	\$937.50/week \$48,750/yr

Note that, while the increase in federal salary thresholds scheduled to go into effect on December 1 has been blocked by a federal court, the New York State salary threshold increases are unaffected by the federal litigation and will take effect on December 31, 2016.

Pay Data Reporting on EEO-1

The EEO-1 report for 2017 (due on March 31, 2018) will, for the first time, require employers with 100 or more employees to submit pay data. Specifically, employees will need to report aggregate W-2 income within 12 pay bands for males and females, broken down by racial or ethnic category, across several job groupings. Employers will also need to report aggregate hours for employees in those same categories, which the EEOC has stated is necessary to evaluate differences in pay. Note that for exempt employees, employers have the option to record actual hours, or to use 40 hours per week for exempt employees and 20 hours per week for part-time employees.

Although the revised EEO-1 report is not due until early 2018, employers need to start considering how they will track data during 2017. The EEOC has several resources, including a recorded webinar, to explain the new report in detail: It is possible that the new administration may change or rescind this reporting requirement, and employers should be alert for any developments.

<https://www.eeoc.gov/employers/eo1survey/2017survey-fact-sheet.cfm>

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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