

New York State Department of Labor Implements New Salary Basis Thresholds for Exempt Employees

Thursday, December 29, 2016

The **New York State Department of Labor (“NYSDOL”)** has [adopted](#) its [previously proposed amendments](#) to the state’s minimum wage orders^[1] to increase the salary basis threshold for executive and administrative employees (“Amendments”).^[2] The final version of the Amendments contains no changes from the proposals set forth by the NYSDOL on October 19, 2016. The Amendments become effective in only three days—on December 31, 2016.

While the status of the new salary basis threshold for exempt employees pursuant to the **Fair Labor Standards Act (“FLSA”)** is [still unclear](#) following the [nationwide preliminary injunction](#) enjoining the U.S. Department of Labor (“USDOL”) from implementing its new regulations,^[3] this state-wide change requires immediate action for employers that did not increase exempt employees’ salaries or convert employees to non-exempt positions in light of the proposed federal overtime rule.

The current salary basis threshold for the administrative and executive exemptions in New York is \$675 (\$35,100 annually) per week throughout the state. In order to properly classify employees as exempt, employers must ensure that these employees are earning at least the salary basis threshold of the FLSA or the New York wage orders, whichever is higher. The Amendments implement the following increases to New York’s salary basis threshold for the executive and administrative exemptions:

- Employers in New York City
 - Large employers (11 or more employees)
 - \$825.00 per week (\$42,900 annually) on and after 12/31/16
 - \$975.00 per week (\$50,700 annually) on and after 12/31/17^[4]
 - \$1,125.00 per week (\$58,500 annually) on and after 12/31/18
 - Small employers (10 or fewer employees)
 - \$787.50 per week (\$40,950 annually) on and after 12/31/16
 - \$900.00 per week (\$46,800 annually) on and after 12/31/17
 - \$1,012.50 per week (\$52,650 annually) on and after 12/31/18
 - \$1,125.00 per week (\$58,500 annually) on and after 12/31/19
- Employers in Nassau, Suffolk, and Westchester Counties



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- \$750.00 per week (\$39,000 annually) on and after 12/31/16
- \$825.00 per week (\$42,900 annually) on and after 12/31/17
- \$900.00 per week (\$46,800 annually) on and after 12/31/18
- \$975.00 per week (\$50,700 annually) on and after 12/31/19
- \$1,050.00 per week (\$54,600 annually) on and after 12/31/20
- \$1,125.00 per week (\$58,500 annually) on and after 12/31/21
- Employers Outside of New York City, Nassau, Suffolk, and Westchester Counties
 - \$727.50 per week (\$37,830 annually) on and after 12/31/16
 - \$780.00 per week (\$40,560 annually) on and after 12/31/17
 - \$832.00 per week (\$43,264 annually) on and after 12/31/18
 - \$885.00 per week (\$46,020 annually) on and after 12/31/19
 - \$937.50 per week (\$48,750 annually) on and after 12/31/20

The NYSDOL received several comments over the 45-day public comment period as to how employers should manage the weekly salary of exempt employees who work in different areas of the state. The NYSDOL stated that these questions will be addressed by the NYSDOL through Frequently Asked Questions (“FAQs”) and other educational and outreach materials prior to the effective date of the Amendments. On the NYSDOL’s website, a [new set of FAQs](#) addresses how employers should calculate different minimum wage rates for employees who work in areas with different minimum wages, but the FAQs do not specifically address how employers should calculate different salary basis thresholds for those same employees.

What New York Employers Should Do Now

- Review exempt positions in New York State with salaries below the stated thresholds to determine whether (a) the employee’s salary should be increased or (b) the employee’s position should be re-classified as non-exempt.
 - For employees remaining exempt, increase their salaries to the new threshold based on their primary work location as of the December 31, 2016, effective date.
 - For employees reclassified to non-exempt, ensure that all of their work time is accurately recorded as of December 31, 2016.
- Monitor the NYSDOL website for updates on managing employees who work in locations within the state that have different salary basis thresholds.
- Consider establishing procedures to track and update the weekly salaries for employees who work in different locations within New York State.
- Prepare for the salary changes throughout the next few years. If the USDOL overtime rule is implemented, then federal salary basis thresholds will begin to be automatically adjusted for inflation. Depending on your location in New York State, the federal or state salary basis threshold may be higher.

[1] The Amendments modify the salary basis threshold in the NYSDOL’s wage orders covering the building services industry (12 N.Y.C.R.R. 141), miscellaneous industries and occupations (12 N.Y.C.R.R. 142), nonprofitmaking institutions (12 N.Y.C.R.R. 143), and the hospitality industry (12 N.Y.C.R.R. 146).

[2] The NYSDOL’s wage orders do not provide a salary requirement for the professional employee exemption (including both the learned professional and creative exemptions).

[3] The USDOL’s overtime rule would have more than doubled the current salary basis threshold for the executive, administrative, and professional exemptions and was scheduled to take effect on December 1, 2016. The USDOL has appealed the decision to the U.S. Court of Appeals for the Fifth Circuit.

[4] If the USDOL overtime rule is implemented, the salary threshold for large employers in New York City would surpass the \$913 weekly salary threshold for the executive, administrative, and professional exemptions under the FLSA by December 31, 2017.

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