

NY Employers Should Be Aware of Recently Adopted Changes to Salary Threshold For NY Overtime Exemptions

On December 28, the New York State Department of Labor adopted regulations that will increase the salary threshold for exempt employees. As a result, many more employees in New York (i.e., those who will no longer meet the new salary threshold) will become eligible for overtime pay.

The amount of the increase varies by region and by the size of the employer and will gradually increase over time. In New York City, for employers with 11 or more employees, the new salary threshold will be \$825 per week on and after December 31, 2016; \$975 per week on and after December 31, 2017; and \$1,125 per week on and after December 31, 2018. For small employers with employees in New York City, and for employers with employees outside New York City (but within New York State), the increases are smaller and phase in over a longer period. For example, for upstate employees, the new salary threshold will be \$727.50 per week on and after December 31, 2016, and will gradually increase each year until it reaches \$937.50 per week on December 31, 2020.

Importantly, this change in New York law will become effective without regard to the fate of the federal regulations that were scheduled to go into effect on December 1, 2016. Those regulations, which were enjoined by a federal court in the Eastern District of Texas, would have increased the federal salary threshold for white collar employees from \$455 per week to \$913 per week.

The changes in the New York salary threshold could very well take employers by surprise, since the regulations were published with little fanfare. The New York Department of Labor published the rule to comply with a 2016 law that increased minimum wage rates for nonexempt employees in New York. Although that law did not specifically call for increases to the salary threshold for exempt employees, the law instructed the Department of Labor to revise its wage orders "to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage as provided in this [section]." The law further provided that the changes could be promulgated by the DOL without public hearing and without reference to a wage board, and that such changes "shall become effective on the effective date of such increases in the minimum wage"

The upshot of these changes is not intuitive and requires a close examination of New York's wage orders. For employers covered by the Miscellaneous Wage Order, there are two different overtime rates. One overtime rate, applicable to employees who are entitled to overtime under the Fair Labor Standards Act ("FLSA"), is calculated as 1.5 times the employee's regular rate. The other overtime rate, applicable to employees who are not entitled to overtime under the FLSA, but are entitled to overtime under New York law, is calculated as 1.5 times the New York minimum wage, which may very well be lower than the employee's regular rate.

Take, for example, an employee in New York City who earns \$800 per week and works for a large employer. As of December 31, 2016, that employee will meet the salary threshold for the federal exemption (assuming the injunction is not lifted), but will not meet the salary threshold for the New York exemption. Thus, the employee, if he or she satisfies the duties test for exemption, will be exempt from federal overtime. But the employee will be below the salary threshold for New York, and thus must receive 1.5

SEARCH

Search this blog:

Search

ABOUT

This page contains a single entry from the blog posted on January 2, 2017 2:20 PM.

The previous post in this blog was [New York City Council Amends Human Rights Law](#).

The next post in this blog is [New York City, State Consider Bans on Salary History Inquiries](#).

Many more can be found on the [main index page](#) or by looking through [the archives](#).

[Subscribe to this blog's feed](#)
(What is this?)

Powered by
[Movable Type Pro 5.11](#)

times New York minimum wage for hours worked over 40 in a week. In New York City, the minimum wage for large employers will be \$11 per hour as of December 31, 2016. So this employee's overtime rate will \$16.50 (which is 1.5 x \$11). While the overtime pay for such an employee could be significant, it would be less than what would be required under federal law if the employee were overtime eligible under federal law. Federal overtime would be \$30 an hour, which is 1.5 times the employee's hourly rate of \$20.

Employers subject to the Hospitality, Fast Food, and/or Building Service wage orders should consult the provisions of the applicable wage order, which may vary from the provisions described above. For instance, employers covered by the Hospitality Wage Order must pay overtime at 1.5 times the regular rate to all overtime-eligible employees, and cannot take advantage of the lower rate (1.5 times minimum wage) described in the above example.

Another compliance challenge arises due to the regional variation in salary thresholds. An employee who works in New York City some weeks, but travels upstate in other weeks, may satisfy the exemption test when working upstate, but lose exempt status while working in New York City because of the higher salary threshold applicable in New York City. The New York Department of Labor has issued guidance indicating that in such situations, the employer can increase the employee's salary in weeks the employee works in a higher salary threshold region to avoid paying overtime.

This post was authored by Matt Lampe and Wendy Butler of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

Posted by Matt Lampe on January 2, 2017 2:20 PM | [Permalink](#)