

Labor & Employment



SEPTEMBER 2019 • NO. 3

Department of Labor Expands Eligibility for Overtime Pay to Estimated 1.3 Million Workers

The U.S. Department of Labor unveiled its final revisions to the Fair Labor Standards Act (“FLSA”) “white collar” exemption regulations on Tuesday, September 24, ultimately increasing the minimum salary threshold to be exempt from entitlement to overtime pay from \$455 per week (\$23,660 annually) to \$684 per week (\$35,568 annually).

The FLSA generally requires covered employers to pay employees a minimum wage plus overtime (at 1.5 times the employees’ regular rate of pay) for any hours worked in excess of 40 in a work week. The FLSA, however, exempts certain employees from the overtime pay requirement. These new regulations apply only to those “white collar” employees who meet the criteria to qualify for the executive, administrative or professional employee exemptions. Previously, to qualify for one of these exemptions, the FLSA required these employees be paid on a salary basis and earn a minimum salary of \$455 a week. The Department of Labor’s revised and updated regulation will increase that salary threshold to \$684 per week starting **January 1, 2020**.

The updated regulations will also increase the minimum salary threshold for Highly Compensated Employees from \$100,000 to \$107,432.

NEW YORK’S THRESHOLD STILL EXCEEDS THE FEDERAL LEVEL FOR EXECUTIVE AND ADMINISTRATIVE EMPLOYEES

As a reminder, employers in New York were already bound by a higher threshold, which will continue to increase and exceed the federal bar for exempt administrative and executive employees.

In order to take advantage of the overtime exemption for executive and administrative employees, large New York City employers, having 11 or more employees, are presently required to pay those employees a minimum salary of \$1,125 per week (\$58,500). Small employers, defined as having 10 or fewer employees, are required to pay exempt employees a minimum salary of \$1,012.50 per week (\$52,650). The minimum salary which must be paid to employees to meet the exemption in the counties of Nassau, Suffolk, and Westchester is \$900 per week

(\$46,800), while the minimum salary is \$832 per week (\$43,264) for the rest of New York State.

Starting December 31, 2019, however, in order to maintain the executive and administrative exemptions, small employers in New York City will have to pay a minimum salary that is the same as large employers (\$1,125 per week or \$58,500 on an annual basis). Also starting December 31, 2019, the minimum salary that employers in Nassau, Suffolk, and Westchester Counties will have to pay to maintain the exemption will increase to \$975 per week (\$50,700). The minimum salary for these counties will increase again on December 31, 2020 to \$1,050 per week (\$54,600), and on December 31, 2021 to \$1,125 per week (\$58,500)—matching the New York City rate.

On December 31, 2019, employers in all other New York counties will be subject to an increased minimum salary threshold of \$885 per week (\$46,020), which will increase to \$937.50 per week (\$48,750) on December 31, 2020, in order to claim the overtime exemption.

To qualify for the professional exemption, all New York employers will be required to meet the basic FLSA salary threshold of \$684 per week (\$35,568) as of January 1, 2020.

WHAT IS THE EFFECT ON EMPLOYERS?

New York employers must be aware of, and remain compliant with, the salary threshold increases going into effect for employees who they classify as exempt from entitlement to overtime as executive and administrative employees under New York law as of December 31, 2019, and those qualifying for the professional exemption as of January 1, 2020 under the FLSA. For those with employees outside of New York, employers will need to continue to monitor updates and changes to the law to ensure ongoing compliance with city, state, and federal laws.

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