

ALERT

April 2016

Employment Law Alert

Important changes are coming to wage-hour laws that will impact New York employers. We summarize several of them here.

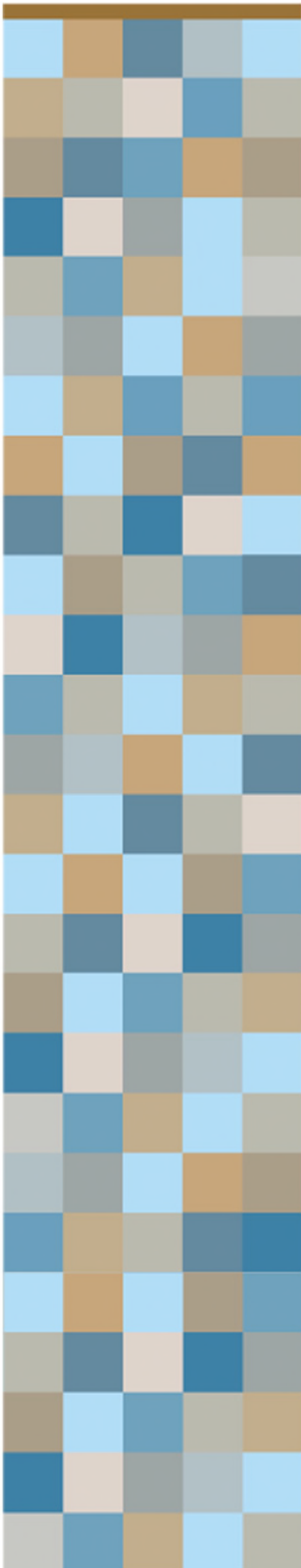
New Administrative Regulations to the Fair Labor Standards Act

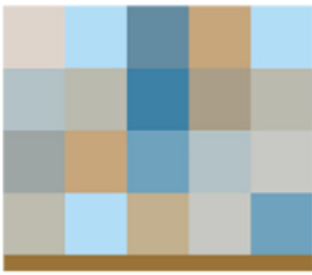
- For purposes of determining whether an employee who is paid on a salary basis earns enough money to be classified as exempt (the so-called "salary level" test), the United States Department of Labor ("US DOL") may raise the 2016 level to \$970 per week, or \$50,440 per year. (The current level is \$455 per week, or \$23,650 per year.) An employee paid on a salary basis in excess of this amount would still need to perform certain executive, administrative or professional duties (the "duties" test) to be properly classified as exempt under the FLSA.
- For classification as a highly compensated employee paid on a salary basis, the US DOL may raise the 2016 required salary level to \$122,148 per year. The regulations also exempt "highly compensated" employees who "customarily and regularly" perform one of the required duties of an exempt administrative, executive or professional employee, but who do not otherwise meet the duties test.

These wage levels will likely continue to change over time, as they are calculated to equal the 40th percentile of weekly earnings for full-time salaried workers based on government data for the basic salary level test, and to the 90th percentile of weekly earnings for full-time salaried employees to set the compensation level for highly compensated employees. At the present time, the new salary levels are not expected to apply to outside sales employees and to certain professional employees such as teachers, doctors and lawyers. Nonetheless, this increase to the salary level test will significantly impact many New York employers.

Changes to Minimum Wage in New York State

New York's budget agreement, signed by Governor Cuomo on April 4, 2016, announces a steady increase to the minimum wage, with the precise amount on any given date depending on the location where the employee works and the size of the employer. In New York City, for businesses with at least 11 employees, the minimum wage will rise to \$11 per hour on December 31, 2016, then another \$2 each of the next two years, so that by December 31, 2018 the minimum wage for their employees will be \$15.00 per hour.





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For employees of companies in New York City with 10 or fewer employees, the minimum wage would rise to \$10.50 per hour by the end of 2016; to \$12.00 per hour by the end of 2017; to \$13.50 per hour by the end of 2018; and, on December 31, 2019, to \$15.00 per hour.

For Nassau, Suffolk, and Westchester Counties, regardless of the number of employees, the increases will be as follows: \$10.00 per hour on December 31, 2016; \$11.00 per hour on December 31, 2017; \$12.00 per hour on December 31, 2018; \$13.00 per hour on December 31, 2019; \$14.00 per hour on December 31, 2020; and \$15.00 per hour on December 31, 2021.

For workers in the rest of the state, also regardless of the number of employees, the minimum wage will increase to \$9.70 at the end of 2016, then another \$0.70 each year thereafter until reaching \$12.50 on December 31, 2020 – after which date, minimum wage will continue to increase to \$15 on an indexed schedule to be set by the Director of the Division of Budget in consultation with the Department of Labor. For companies that have facilities and/or employees in various counties around the State, feel free to contact us for assistance in determining the applicable minimum wage rates.

The Budget does include a "safety valve" provision, which will allow the Department of Budget to issue a report and recommendation to the Commissioner of Labor, who may then decide to delay any scheduled increases. Employers who rely on the tipped income credit in the hospitality industry should note that the allowable credit will be limited to the greater of 2/3 of the applicable minimum wage or \$7.50.

Paid Family Leave Coming to New York State

New York's family leave provision, when fully implemented, will make workers eligible for 12 weeks of paid leave when caring for an infant, a family member with a serious health condition or to relieve family pressures when someone is called to active military service. Beginning on January 1, 2018, employers will have to provide all full- and part-time employees who have been working for them for at least 6 months with up to 8 weeks of paid leave at a rate of up to 50 percent of the individual's average weekly wage, with a maximum paid leave of 50 percent of the statewide average weekly wage.

These changes will require many employers to revisit their classifications of employees as exempt or non-exempt, their payroll practices, and their employment policies and practices. MH&H can assist you in understanding and addressing these issues, including reviewing and updating your policies.

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