

**LEGAL ADVISORY**

**FROM:** Paul H. Pincus  
**TO:** Clients and Friends  
**DATE:** December 2, 2019  
**RE:** New York State Minimum Wage Increases, and Salary Level Increases for Certain Exempt Employees, for 2020



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**I. Increased Hourly Minimum Wage Rates as of December 31, 2019**

As we previously advised, as part of the 2016-17 New York State budget, Governor Cuomo signed into law a staggered set of minimum wages increases that will over a period of several years increase the hourly minimum wage in New York State to \$15.00 for all workers in all industries across the state.

The minimum wage will rise to \$15.00 an hour under different schedules in three distinct New York State regions: (1) New York City; (2) Nassau, Suffolk and Westchester counties; and (3) the remainder of the state, based on where the employees physically work (and in New York City, the number of employees who work in New York City for a particular employer).

The following increased hourly rates will go into effect on December 31, 2019.

<b>Employees in New York City – employers with 11 or more employees</b>	\$15.00/hr
<b>Employees in New York City – employers with 10 or fewer employees</b>	\$15.00/hr
<b>Employees in Nassau, Suffolk and Westchester counties</b>	\$13.00/hr
<b>Employees in other counties of the State</b>	\$11.80/hr

**II. Increased Weekly Salary Levels for Certain Exempt Employees as of December 31, 2019**

As we previously advised, the New York State Department of Labor (“NYSDOL”) amended its wage orders to significantly increase over a period of several years the salary basis threshold for New York-based executive and administrative employees (such as recruiters and possibly account managers of staffing firms) to be exempt from overtime. **New York does not have its own salary requirement for professional employees (such as computer professionals) to be exempt from overtime, and federal salary thresholds for overtime therefore apply to professional employees in New York.**

While the United States Department of Labor’s federal salary threshold for the “white collar exemption” (executive, administrative and professional employees) from overtime will increase to \$684.00 per week on January 1, 2020, companies must comply with the stricter requirements or higher salary thresholds that exist in states such as New York to qualify for exemption of employees who physically work in those states.<sup>1</sup>

In addition to satisfying the federal “duties test” for exemption, New York requires executive and administrative employees in the State to satisfy a per week salary level threshold. New York’s salary thresholds will increase under different schedules in three distinct State regions: (1) New York City; (2) Nassau, Suffolk and Westchester counties; and (3) the remainder of the state, based on where the employees physically work<sup>2</sup> (and in New York City, the number of employees who work in New York City for a particular employer).

The following increased weekly salary level thresholds will go into effect on December 31, 2019.

<b>Employees in New York City – employers with 11 or more employees</b>	\$1,125.00/wk (\$58,500/yr)
<b>Employees in New York City – employers with 10 or fewer employees</b>	\$1,125.00/wk (\$58,500/yr)
<b>Employees in Nassau, Suffolk and Westchester counties</b>	\$975.00/wk (\$50,700/yr)
<b>Employees in other counties of the State</b>	\$885.00/wk (\$46,020/yr)

<sup>1</sup> While the new federal rule will permit non-discretionary bonuses and incentive compensation (including commissions) to satisfy up to 10% of an employee’s weekly salary threshold, companies will need to ascertain in each state where their employees physically work whether applicable state or local laws will follow the federal rule in this respect.

<sup>2</sup> The NYSDOL has stated that in order to maintain exempt status, the salaries of employees whose employers conduct business throughout the State will need to change during periods in which they work in higher threshold counties.

**Compliance Options**

Companies should analyze their workforce now to determine (1) which of their New York-based employees, such as recruiters and possibly account managers of staffing firms, who are exempt under New York’s current weekly salary thresholds will cease to be exempt on December 31, 2019 under the new salary thresholds, (2) how close to the new salary thresholds such employees are currently being paid, and (3) the number of hours per week such employees generally work. Companies can then decide whether to increase the employees’ weekly salaries/draws for them to continue to be exempt, pay overtime for any hours such employees work in excess of 40 hours per week, or limit to 40 hours per week the number of hours such employees are permitted to work. If a decision is made to pay overtime rather than increase salaries/draws, appropriate timekeeping systems should be put in place to accurately track the weekly hours of the employees.\*

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For more information about this Legal Advisory or assistance with compliance, please contact Paul Pincus at (212) 588-0022 or [php@orllp.legal](mailto:php@orllp.legal).

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