

NY Employers Must Prep For New Wage Laws Now

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Without much attention or fanfare, New York enacted legislation mandating a series of significant wage increases, including a substantial jump by the end of 2018. Both the minimum wage and the minimum salary level for employees to be exempt from overtime pay will rise again as of Dec. 31, 2018. While other jurisdictions have enacted similar laws, employers in New York must pay their employees between \$11.10 and \$15 per hour — depending on how many employees they have and where they are located — some of the highest minimum wages in the nation. Likewise, employers in New York that want certain employees to maintain common exemptions must review their payrolls to ensure that the salaries are sufficiently high. For example, a New York City employer with more than 11 employees must pay certain employees a base salary of \$58,500 per year if they are to remain exempt.

Wage increases, if required, have to be in effect on Monday, Dec. 31, 2018, the last day of the calendar year. Yes, that means that employers should make sure their payrolls are in order well before the new year. Significantly, the minimum wage rates apply to salaried employees as well. In other words, simply paying employees a salary does not mean they will be paid enough to satisfy the law.

Increase in Minimum Wage

The New York state minimum wage is set to increase again at the end of this year to rates that vary depending on the employer's location and in New York City, the number of employees. The number of employees includes both full and part-time employees across all locations, but only those employees working in New York City must be paid the higher New York City minimum wage rate.

New York's current minimum wages and those in effect as of Dec. 31, 2018, are as follows:

General Minimum Wage Rate Schedule					
Location	12/31/17	12/31/18	12/31/19	12/31/20*	12/31/21*
NYC – Big Employers (11 or more employees)	\$13.00	\$15.00			
NYC – Small Employers (10 or less employees)	\$12.00	\$13.50	\$15.00		
Long Island and Westchester	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State Workers	\$10.40	\$11.10	\$11.80	\$12.50	*

*Outside of New York City, the minimum wage will continue to increase until the rate reaches \$15 per hour. Please note that different rules may apply in particular industries, such as the hospitality industry.[1]

The minimum wage applies to all employees in New York, including those paid a fixed weekly or biweekly salary. Thus, even employees who are paid a salary may need to receive increases. For example, New York City employees who need to be paid \$15 per hour must earn \$31,200 per year, or \$30,000 per year, assuming 10 paid days off. Payroll companies and professional employer organizations, or PEO's, tend to take a conservative approach, assuming that the employees get no paid time off and generally insist that employers increase salaries to \$31,200. Please note that the minimum wage cannot be satisfied by bonus payments. Accordingly, an assistant earning \$29,000 per year for a 40 hour work week, who gets 10 paid days off, and a \$1,000 year-end bonus will have been paid below minimum wage and the employer will have violated the wage law.

NY Increases Minimum Salary to Be Classified as Exempt From Overtime

Both federal law (the Fair Labor Standards Act) and New York state law require the payment of overtime wages for work performed over 40 hours per workweek, unless the employer can establish that the employee is "exempt" from this requirement. Employees can be exempt only if both their duties and salaries meet certain standards.

The regulation requiring the salary increase under the FLSA never went into effect following a nation-wide ruling by a Texas federal court declaring the regulation invalid. Some states, however, like New York, have enacted their own laws.

At the end of this year, the minimum salary for New York employers claiming the administrative and executive exemptions will increase significantly.

The minimum current salaries in 2017 and as of Dec. 31, 2018 are as follows:

Location	12/31/17	12/31/18	12/31/19	12/31/20
NYC – Big Employers (11 or more employees)	\$975 per week (\$50,700 annually)	\$1,125 per week (\$58,500 annually)		
NYC – Small Employers (10 or less employees)	\$900 per week (\$46,800 annually)	\$1,012.50 per week (\$52,650 annually)	\$1,125 per week (\$58,500 annually)	
Long Island and Westchester	\$825 per week (\$42,900 annually)	\$900 per week (\$46,800 annually)	\$975 per week (\$50,700 annually)	\$1050 per week (\$54,600 annually)
Remainder of New York State Workers	\$780 per week (\$40,560 annually)	\$832 per week (\$43,264 annually)	\$885 per week (\$46,020 annually)	\$937 per week (\$48,750 annually)

Regardless of the employees' duties, their salaries must meet the newly increased minimum requirement to be exempt. New York employers may not count an employee's nondiscretionary bonuses, incentive payments or commissions toward salary to reach the minimum level.

For example, an account manager in New York City earning an annual salary of \$45,000 plus a bonus equal to 10 percent of her salary will not be exempt. Her employer will either have to increase her salary or pay her overtime for any hours over 40 in a workweek.

Employers should weigh their options now as there will likely be more to consider than is apparent at first blush, and the deadline is fast approaching. For example, New York employers may choose to raise salaries, and pay smaller bonuses, or pay overtime to employees whose salaries fall below the increased minimums. Employers should consider more than the bottom line as they may need management buy-in regarding any necessary changes, and may take into account the impact on employee morale for changing bonus structure and/or exemption status.

Mistakes Are Costly

An employer that violates NY's wage law, even unknowingly, will suffer steep consequences. Not only are employers liable to the employees for minimum wage underpayments, and back overtime payments, they must also pay interest, attorneys' fees and costs and most often, liquidated damages in an amount equal to 100 percent of the amount owed to the employee. Additionally, wage violations subject employers to criminal penalties.



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[1] <https://www.ny.gov/new-york-states-minimum-wage/new-york-states-minimum-wage>