

NEW YORK MINIMUM WAGE AND SALARY INCREASES FOR 2022

Hodgson Russ Labor & Employment Alert
December 3, 2021

Once again, New York State employers will see increases in minimum wage, tip credits (for hospitality) and salary basis thresholds. These increases will go into effect on December 31, 2021, and employers are well advised to address compliance before the effective date.

New York State Minimum Wage

Some minimum wage rates will increase on December 31, 2022. Workers in New York City employed by businesses with 11 or more employees shall continue to be paid a minimum wage rate of \$15.00 per hour (same as the December 31, 2018 rate). Workers in New York City employed by businesses with 10 or fewer employees will continue to be paid a minimum wage rate of \$15.00 per hour (same as the December 31, 2019 rate). Workers in Nassau, Suffolk, and Westchester Counties shall be paid a minimum wage rate of \$15.00 per hour (up from \$14.00). Workers in the rest of the State shall be paid a minimum wage rate of \$13.20 per hour (up from \$12.50).

Fast Food Minimum Wage

As of July 1, 2021, the minimum wage for individuals working at fast food establishments (anywhere in the State) is \$15.00 per hour. No further increase is scheduled for December 31, 2021. A fast food establishment is any business that meets the following criteria: primarily serves food or drinks; offers limited service where customers order and pay before eating; and is part of a chain of 30 or more locations. A fast food worker is an individual whose job duties include at least one of the following: customer service; cooking; food or drink preparation; delivery; security; stocking supplies or equipment; cleaning; or routine maintenance.

Tip Credit

As of December 31, 2020, the tip credit was eliminated in all industries -- except hospitality.

Hospitality employers will still be able to take a tip credit (with some increases going into effect on December 31, 2021) for service employees and food service workers, provided the weekly average of tips equals or exceeds a stated hourly tip threshold (for service employees), and the total tips received plus wages equals or exceeds the applicable minimum wage. For New York City employers, the tip credit for service

Attorneys

Luisa Bostick
Joseph Braccio
Glen Doherty
Andrew Drilling
Ryan Everhart
Andrew Freedman
Peter Godfrey
John Godwin
Charles H. Kaplan
Karl Kristoff
Christopher Massaroni
Elizabeth McPhail
Lindsay Menasco
Kinsey O'Brien
Jeffrey Swiatek
Michael Zahler

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employees is \$2.50, and the tip credit for food service workers is \$5.00. For employers in Nassau, Suffolk or Westchester Counties, the tip credit for service employees is \$2.50, and the tip credit for food service workers is \$5.00. For all other hospitality employers, the tip credit for service workers is \$2.20, and the tip credit for food service workers is \$4.40. In general, restaurants and hotels are considered to be hospitality industry employers under the New York State Commissioner of Labor's Hospitality Industry Wage Order.

Minimum Wage, Overtime and Exemptions

Generally speaking, employers must pay nonexempt employees at least the applicable minimum wage for all hours worked up to 40 in a work week, and must pay employees overtime at a rate of 1 1/2 times their regular rate of pay for all hours worked over 40 in a work week.

There are a number of exemptions to the minimum wage and overtime requirements -- the most common of which are known as the "white collar" exemptions (for executive, administrative and professional employees). To qualify for an exemption, an employee must meet certain tests regarding his or her job duties, and must be paid on a salary basis at not less than the applicable statutory threshold.

Minimum Salary Levels for Exempt "White Collar" Employees

Effective December 31, 2021, employees who are exempt from overtime under the executive and administrative exemptions must receive a certain minimum salary to retain their exempt status. The minimum salary for such exempt employees working in New York City for employers with 11 or more employees is \$1,125.00 per week (same as the December 31, 2018 threshold). Exempt employees working in New York City for employers with 10 or fewer employees shall be paid a minimum salary of \$1,125.00 per week (same as the December 31, 2019 threshold). Exempt employees working in Nassau, Suffolk, or Westchester Counties shall be paid a minimum salary of \$1,125.00 per week (up from \$1,050.00). Exempt employees working in the rest of the State shall be paid a minimum salary of \$990.00 (up from \$937.50).

With respect to the professional exemption, there is no minimum salary level requirement under New York law, However there is a weekly salary threshold under federal law of \$684.00, which went into effect on January 1, 2020.

Action Plan for New York Employers

Employers must comprehensively review the various wage and hour changes discussed above to ensure compliance by no later than December 31, 2021. Moreover, employers should conduct a review of the duties tests for the administrative, executive and professional exemptions, because meeting the salary threshold alone does not confer exempt status.

If you have any questions or comments concerning your business's 2022 minimum wage and salary threshold obligations, please contact [Peter Godfrey](#) (716.848.1246), [Glen Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), or any member of [Hodgson Russ's Labor & Employment Practice](#).