

CLIENT ALERT

Increase in Minimum Salary for Exemptions from New York Overtime Pay Requirements – Effective December 31, 2017

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Employers in New York are generally required to pay overtime to employees, unless otherwise exempt, at the rate of 1½ times the employee's regular rate of pay for all hours worked in excess of 40 hours in a workweek.¹ Two such exemptions are the executive and administrative exemptions, which exempt certain employees from both federal and New York overtime pay requirements based on their salaries and job responsibilities. While the minimum salary required to qualify for the executive and administrative exemptions from overtime pay under federal law remains unchanged at \$23,660 for 2018, the minimum salary required to qualify for those exemptions under New York law is substantially higher and will increase on December 31, 2017 and on a staggered schedule in future years.

Minimum Salary Under New York Law

The minimum salary required to qualify for the executive and administrative exemptions under New York law is as follows:

¹ Under certain circumstances, employers may pay salaried, non-exempt employees overtime at a rate of ½ their regular rate of pay pursuant to the "fluctuating workweek" methodology of calculating overtime.

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County	Current Minimum Salary	Increased Minimum Salary on and after 12/31/17	Increased Minimum Salary on and after 12/31/18	Increased Minimum Salary on and after 12/31/19	Increased Minimum Salary on and after 12/31/20	Increased Minimum Salary on and after 12/31/21
New York City with 11 or more employees	\$42,900	\$50,700	\$58,500	\$58,500	\$58,500	\$58,500
New York City with 10 or fewer employees	\$40,950	\$46,800	\$52,650	\$58,500	\$58,500	\$58,500
Nassau, Suffolk, and Westchester counties	\$39,000	\$42,900	\$46,800	\$50,700	\$54,600	\$58,500
Outside New York City, Nassau, Suffolk, and Westchester counties	\$37,830	\$40,560	\$43,264	\$46,020	\$48,750	\$48,750

However, qualifying for the executive and administrative exemptions is not only a matter of whether employees earn these minimum salaries; their job responsibilities must also satisfy the statutory duties tests set forth below.

Executive Exemption Under New York Law

The executive exemption covers employees who work as bona fide executives:

- Whose primary duties consist of the management of the enterprise in which such individuals are employed or of a customarily recognized department or subdivision thereof;
- Who customarily and regularly direct the work of two or more other employees therein;
- Who have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- Who customarily and regularly exercise discretionary powers; and

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- Who are paid for their services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts in the chart above.

Administrative Exemption Under New York Law

The administrative exemption covers employees who work in a bona fide administrative capacity:

- Whose primary duties consist of the performance of office or nonmanual field work directly related to management policies or general operations of such employees' employer;
- Who customarily and regularly exercise discretion and independent judgment;
- Who regularly and directly assist an employer, or an employee employed in a bona fide executive or administrative capacity (e.g., employment as an administrative assistant); or who perform, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge; and
- Who are paid for their services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the amounts in the chart above.

How Employers Should Prepare

Employers in New York should review the salaries and job responsibilities of their employees to determine whether the salaries of any affected employees need to be raised to comply with the new minimum salaries for the executive and administrative exemptions from the overtime pay rules under New York law in 2018. Employers may alternatively choose to treat affected employees who earn less than the new minimum salaries as non-exempt and comply with overtime pay requirements.

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