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September 26, 2017

UPDATED: PAY ATTENTION TO PAY PRACTICES!
EE0-1 Pay Reporting Suspended;
New State Minimum Wage and Salary Thresholds Remain in Effect

Minimum Wage Increase

The minimum hourly wage for all employees, including those employed by nonprofits, will rise in stages over the next few years, until it hits \$15.00. For the first time, the minimum wage increases will be adjusted differently depending on the size of the employer and the location of the employees. “Large Employers” are those with more than 10 employees, whether or not all employees work in New York City, in both the current and prior calendar year. However, only those employees working within New York City need be paid at the Large Employer rate.

For employers in New York City:

Effective Date	Large Employers: 11 or more Employees	Small Employers: 10 or Fewer Employees
December 31, 2016	\$11.00/hr	\$10.50/hr
December 31, 2017	\$13.00/hr	\$12.00/hr
December 31, 2018	\$15.00/hr	\$13.50/hr
December 31, 2019		\$15.00/hr

For all employers in Westchester, Nassau, and Suffolk Counties:

Effective December 31, 2016: \$10/hr, increasing by \$1 each year until reaching \$15/hr on or after December 31, 2021.

For all employers in all other parts of New York State:

Effective December 31, 2016: \$9.70/hr, increasing by \$0.70 each year until reaching \$12.50/hr on or after December 31, 2020.

If the federal minimum wage is raised above these levels, the federal rate will apply.

The NYS Department of Labor has issued a helpful FAQ at the bottom of its website page describing the new minimum wage rules:

<https://www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>

The FAQ detailed information about how the Department of Labor is interpreting the new law, including:

- An employer is “Large” as soon as it has eleven employees. Even if the number of employees falls below eleven later that year, the employer will have to wait until the next calendar year to apply the Small Employer rate.
- The appropriate geographical rate is the rate for the area where the employee performs the work, not the area where the employer is located.
- If an employee works in more than one geographical area during the same week, an employer must pay either i) the highest rate for all hours worked, or ii) apply the appropriate rate for the hours worked in each area. In the latter case, overtime may be paid at a blended rate.
- Part-time employees are counted toward the number to determine whether an employer is “Large” or “Small.”

Increase in the Salary Threshold for Overtime Exemption

Just days before their effective date, the New York State Department of Labor (DOL) has issued final rules increasing the salary threshold for determining whether an employee is exempt from the requirement to receive overtime. As expected, the final rules are unchanged from the proposed rules. The new salary thresholds, like the minimum wage, are adjusted for geographic location and size of the employer.

The following salary thresholds apply to Executive and Administrative Employees (there is no salary threshold for Professional Employees):

For employers in New York City:

Effective Date	Large Employers: 11 or more Employees	Small Employers: 10 or Fewer Employees
December 31, 2016	\$825.00/week \$42,900/yr	\$787.50/week \$40,950/yr
December 31, 2017	\$975.00/week \$50,700/yr	\$900.00/week \$46,800/yr
December 31, 2018	\$1,125.00/week \$58,500/yr	\$1,012.50/week \$52,650/yr
December 31, 2019		\$1,125.00/week \$58,500/yr

For all employers in Westchester, Nassau, and Suffolk Counties:

Effective Date	
December 31, 2016	\$750.00/week \$39,000/yr
December 31, 2017	\$825.00/week \$42,900/yr
December 31, 2018	\$900.00/week \$46,800/yr
December 31, 2019	\$975.00/week \$50,700/yr
December 31, 2020	\$1,050.00/week \$54,600/yr
December 31, 2021	\$1,125.00/week \$58,500/yr

For all employers in all other parts of New York State:

Effective Date	
December 31, 2016	\$725.50/week \$37,726/yr
December 31, 2017	\$780.00/week \$40,560/yr
December 31, 2018	\$832.00/week \$43,264/yr
December 31, 2019	\$885.00/week \$46,020/yr
December 31, 2020	\$937.50/week \$48,750/yr

Note that, while the increase in federal salary thresholds has been declared invalid by a federal District Court in Texas (in a decision given on August 31, 2017), the New York State salary threshold increases are unaffected by the federal litigation and will remain effective.

Pay Data Reporting on EEO-1 Suspended Indefinitely

In our January 2017 legal alert update, we reported that the EEO-1 report for 2017 (due on March 31, 2018) will, for the first time, require employers with 100 or more employees to submit pay data. (Specifically, employers needed to report aggregate W-2 income within 12 pay bands for males and females, broken down by racial or ethnic category, across several job groupings. Employers also needed to report aggregate hours for employees in those same categories, which the U.S. Equal Employment Opportunity Commission (EEOC) had stated was necessary to evaluate differences in pay.)

However, on August 29, 2017, the Office of Information and Regulatory Affairs (OIRA) suspended implementation of these pay collection components of “Component 2” of the Revised EEO-1 Report effective immediately. The Acting Chair of the EEOC issued a statement advising employers that the EEO-1 Report used in previous years (also known as “Component 1” of the Revised EEO-1 Report) should be submitted by the March 31, 2018 deadline.

As always, employers should closely monitor this situation and be alert for any developments. Despite the stay on gathering and reporting wage information on the EEO-1 Report, equal pay continues to be of significant interest to the EEOC. Accordingly, employers should continue to ensure that their pay practices are applied without regard to gender, race and ethnicity.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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