

January 5, 2017

## New York State Regulations Increase Salary Required for Employees Exempt from Overtime

**Based on Statutory Increases to the Minimum Wage, NYS Department of Labor Increases Salary Thresholds for Executive and Administrative Exemptions to Levels Close to Those in Currently Enjoined Federal Rule**

---

### SUMMARY

On December 28, 2016, the New York State Department of Labor issued notices of adoption of new rules, effective December 31, 2016, substantially increasing the minimum required weekly salary thresholds for qualification for the executive and administrative overtime exemptions. The rules are significant for New York employers because rules issued by the federal Department of Labor similarly increasing the salary thresholds nationwide have been enjoined by a federal court and are of uncertain prospects, in light of the incoming new Presidential administration. In New York City, for employers with 11 or more employees, the New York rules increase the 2017 minimum weekly salary threshold for the executive and administrative exemptions from \$675 per week (\$35,100 annually) to \$825 per week (\$42,952 annually). As noted in our memorandum on the federal overtime regulations, available [here](#), increases to the federal salary thresholds for the so-called “white collar” exemptions from \$23,660 annually to \$47,476 annually have been preliminarily enjoined. New York’s regulations confirm that employers in that State must comport with the new rules notwithstanding the federal developments.

---

### SCHEDULED INCREASES IN NEW YORK STATE’S MINIMUM WAGE

The regulatory increases to the salary threshold for overtime eligibility were adopted by the New York State Department of Labor (the “NYS DOL”) based on recent statutory increases in the minimum wage. The New York State 2016-2017 budget included a plan to increase the minimum wage on an annual schedule with the goal of reaching \$15 an hour for all workers in all industries across the state, as follows:

---

New York   Washington, D.C.   Los Angeles   Palo Alto   London   Paris   Frankfurt  
Tokyo   Hong Kong   Beijing   Melbourne   Sydney

## SULLIVAN & CROMWELL LLP

- For workers in New York City employed by large businesses (those with at least 11 employees), the minimum wage rose to \$11 at the end of 2016, and is scheduled to rise another \$2 each year thereafter, reaching \$15 on December 31, 2018.
- For workers in New York City employed by small businesses (defined as 10 employees or fewer), the minimum wage rose to \$10.50 by the end of 2016, and is scheduled to rise another \$1.50 each year thereafter, reaching \$15 on December 31, 2019.
- For workers in Nassau, Suffolk and Westchester Counties, the minimum wage increased to \$10 at the end of 2016, and is scheduled to rise \$1 each year thereafter, reaching \$15 on December 31, 2021.
- For workers in the rest of the state, the minimum wage increased to \$9.70 at the end of 2016, and is scheduled to rise another \$0.70 each year thereafter until reaching \$12.50 on December 31, 2020, after which the minimum wage would continue to increase to \$15 on an indexed schedule to be set by the Director of the Division of Budget in consultation with the NYS DOL.

---

### CORRESPONDING INCREASES TO SALARY THRESHOLD

The New York minimum wage law, Labor Law § 652, excludes from the definition of “employee” any “individual permitted to work in [an] executive, administrative or professional capacity.” In a requirement analogous to a test adopted by the U.S. Department of Labor with respect to the federal Fair Labor Standards Act, the New York State Labor Law provides that, to be entitled to the executive or administrative exemption, the individual’s role satisfy both a duties test and a salary threshold.<sup>1</sup> As of December 31, 2015, the salary threshold for the executive and administrative exemption was \$675 per week.<sup>2</sup>

In its new rulemaking, the NYS DOL has taken the position that the New York State Labor Law requires that the salary threshold for overtime exemption be proportionate to increases in the statutory minimum wage.

On December 28, 2016, the NYS DOL issued its final regulations, known as Minimum Wage Orders, applicable to the various industries and occupations governed by the Labor Law’s minimum wage requirements. The Minimum Wage Orders implement the changes in the minimum wage, as well as the proportionate changes in the revised salary thresholds for the administrative and executive exemptions, varying by regions and employers as follows:<sup>3</sup>

- (1) *New York City* for
  - (i) *Large employers* of eleven or more employees
    - \$825.00 per week on and after December 31, 2016;
    - \$975.00 per week on and after December 31, 2017;
    - \$1,125.00 per week on and after December 31, 2018;
  - (ii) *Small employers* of ten or fewer employees
    - \$787.50 per week on and after December 31, 2016;

## SULLIVAN & CROMWELL LLP

\$900.00 per week on and after December 31, 2017;  
\$1,012.50 per week on and after December 31, 2018;  
\$1,125.00 per week on and after December 31, 2019;

(2) *Remainder of downstate* (Nassau, Suffolk and Westchester counties)

\$750.00 per week on and after December 31, 2016;  
\$825.00 per week on and after December 31, 2017;  
\$900.00 per week on and after December 31, 2018;  
\$975.00 per week on and after December 31, 2019;  
\$1,050.00 per week on and after December 31, 2020;  
\$1,125.00 per week on and after December 31, 2021;

(3) *Remainder of state* (outside of New York City, Nassau, Suffolk and Westchester counties)

\$727.50 per week on and after December 31, 2016;  
\$780.00 per week on and after December 31, 2017;  
\$832.00 per week on and after December 31, 2018;  
\$885.00 per week on and after December 31, 2019;  
\$937.50 per week on and after December 31, 2020.

---

## SIGNIFICANCE

As a result of these new rules, employers in New York will need to review the status of employees who have been treated as exempt from overtime to ensure that they remain exempt. The new salary threshold increases will be applicable notwithstanding the injunction against the federal rule.

\* \* \*

## ENDNOTES

---

<sup>1</sup> 12 NYCRR Part 142-2.14(c)(4).

<sup>2</sup> 12 NYCRR Part 142-2.14(c)(4)(i) and (ii).

<sup>3</sup> Minimum Wage Order for Miscellaneous Industries and Occupations, *available at* <https://labor.ny.gov/formsdocs/wp/CR142.pdf>.

# SULLIVAN & CROMWELL LLP

## ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, three offices in Europe, two in Australia and three in Asia.

## CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers listed below, or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future related publications from Michael B. Soleta (+1-212-558-3974; [soletam@sullcrom.com](mailto:soletam@sullcrom.com)) in our New York office.

## CONTACTS

---

### New York

Tracy Richelle High	+1-212-558-4728	<a href="mailto:hight@sullcrom.com">hight@sullcrom.com</a>
Theodore O. Rogers Jr.	+1-212-558-3467	<a href="mailto:rogerst@sullcrom.com">rogerst@sullcrom.com</a>
Christina Andersen	+1-212-558-4454	<a href="mailto:andersenc@sullcrom.com">andersenc@sullcrom.com</a>

---

### Washington, D.C.

Julia M. Jordan	+1-212-956-7535	<a href="mailto:jordanjm@sullcrom.com">jordanjm@sullcrom.com</a>
-----------------	-----------------	--

---