

Wage Orders Likely Post Compliance Issues for New York Employers

For New York employers, many wage-and-hour obligations are not set forth in the statute. Rather, they are outlined in Wage Orders promulgated by the New York State Department of Labor. The New York DOL has published proposed modified Wage Orders in the State Register, implementing changes to the existing Wage Orders based on the recently passed increase to the state minimum wage. These Orders – Building Services, Hospitality, Miscellaneous Industries and Occupations, and Agriculture – which are effective December 31, 2016 (absent unanticipated delay), mandate review of wage-and-hour practices by all New York employers, especially those with operations throughout the state, as many of the proposed modifications derive from the recently enacted state minimum wage legislation which provides for different schedules for the increased minimum wage throughout the state.

Some of the most significant proposed changes and the manner in which they differ across the state are summarized below.

Salary Basis

While much attention has been paid to the upcoming increase of the minimum salary for

exempt white collar employees under federal law, consistent with the Department's past practice, the Wage Orders set the minimum salary for exempt executives and administrators (there is no minimum salary requirement for professionals under the Wage Orders) at 75 times the state minimum wage. With the state minimum wage increasing to \$15.00 per hour in most of the state (on different timetables, depending on location) the state salary requirement will rise above the new federal standard. For "large" New York City employers with more than 10 employees, this will occur on December 31, 2017. The following summarizes the increased minimum salary requirements throughout the state over the next few years:

(1) New York City for

(i) Large employers of 11 or more employees

- \$825.00 per week on and after 12/31/16;
- \$975.00 per week on and after 12/31/17;
- \$1,125.00 per week on and after 12/31/18;

(ii) Small employers of 10 or fewer employees

- \$787.50 per week on and after 12/31/16;

- \$900.00 per week on and after 12/31/17;
- \$1,012.50 per week on and after 12/31/18;
- \$1,125.00 per week on and after 12/31/19;

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

- \$750.00 per week on and after 12/31/16;
- \$825.00 per week on and after 12/31/17;
- \$900.00 per week on and after 12/31/18;
- \$975.00 per week on and after 12/31/19;
- \$1,050.00 per week on and after 12/31/20;
- \$1,125.00 per week on and after 12/31/21;

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

- \$727.50 per week on and after 12/31/16;
- \$780.00 per week on and after 12/31/17;
- \$832.00 per week on and after 12/31/18;

- \$885.00 per week on and after 12/31/19;
- \$937.50 per week on and after 12/31/20.

Tip Credit

The tip credit that can be taken against the minimum wage for employees who customarily and regularly receive tips also will vary throughout the state. For example, for food service workers under the Hospitality Order, the minimum cash wage, permissible credits, and applicable totals would be:

(1) New York City for

(i) Large employers of 11 or more employees

- \$7.50 Cash Wage, \$3.50 Credit, \$11.00 Total on and after 12/31/16;
- \$8.65 Cash Wage, \$4.35 Credit, \$13.00 Total on and after 12/31/17;
- \$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after 12/31/18;

(ii) Small employers of 10 or fewer employees

- \$7.50 Cash Wage, \$3.00 Credit, \$10.50 Total on and after 12/31/16;
- \$8.00 Cash Wage, \$4.00 Credit, \$12.00 Total on and after 12/31/17;
- \$9.00 Cash Wage, \$4.50 Credit, \$13.50 Total on and after 12/31/18;

- \$10.00 Cash Wage, \$5.00 Credit,
\$15.00 Total on and after 12/31/19;

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

- \$7.50 Cash Wage, \$2.50 Credit,
\$10.00 Total on and after 12/31/16;
- \$7.50 Cash Wage, \$3.50 Credit,
\$11.00 Total on and after 12/31/17;
- \$8.00 Cash Wage, \$4.00 Credit,
\$12.00 Total on and after 12/31/18;
- \$8.65 Cash Wage, \$4.35 Credit,
\$13.00 Total on and after 12/31/19;
- \$9.35 Cash Wage, \$4.65 Credit,
\$14.00 Total on and after 12/31/20;
- \$10.00 Cash Wage, \$5.00 Credit,
\$15.00 Total on and after 12/31/21;

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

- \$7.50 Cash Wage, \$2.20 Credit, \$9.70
Total on and after 12/31/16;
- \$7.50 Cash Wage, \$2.90 Credit,
\$10.40 Total on and after 12/31/17;
- \$7.50 Cash Wage, \$3.60 Credit,
\$11.10 Total on and after 12/31/18;
- \$7.85 Cash Wage, \$3.95 Credit,
\$11.80 Total on and after 12/31/19;
- \$8.35 Cash Wage, \$4.15 Credit,
\$12.50 Total on and after 12/31/20.

Further, the Hospitality Order reintroduces separate tip credits that apply to food service workers (as noted above) and service workers, such as delivery persons. New York employers must ensure the appropriate rates are utilized. For service employees, the Hospitality Order also imposes minimum tip thresholds that are greater than the amount of the permissible credit.

Similar variations exist for meal credits and uniform allowances. This is only a summary of the proposed changes. Counsel should be consulted to analyze your organization's obligations under the relevant Wage Order.

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