

The New Year's Eve Ball May Be Dropping, But New York Wage Rates Are Not: A Preview Of Upcoming Changes

Two years ago, the New York State Department of Labor (NYSDOL) issued final regulations implementing changes resulting from increases to the minimum wage. The state minimum wage for non-exempt employees and the salary level for exempt employees will increase in 2019, with different rates applicable depending on where the employees work and the size of the employer (in New York City only). The upcoming 2019 minimum wage rates are set forth below.

New Predictive Scheduling Regulations

The NYSDOL issued sweeping proposed regulations addressing worker scheduling practices in December. Those regulations will affect most employers in the state and approximately one million workers, according to estimates provided by the NYSDOL. The proposed regulations will require employers to provide, among other things, “call-in pay” (ranging from 2-4 hours at the minimum wage) if employers:

1. Do not provide non-exempt employees 14 days’ advance notice of their work shift;
2. Cancel employee shifts without at least 14 days’ advance notice;
3. Require employees to work “on-call”; or
4. Require non-exempt employees to report to work but then send them home prior to the end of their shift.

There are several exceptions to the proposed regulations and employers should carefully review them to determine whether their workers are covered and whether any exceptions apply. The regulations likely will become effective in the first quarter of 2019.

Other Changes Afoot?

Although the predictive scheduling regulations were already in the works before to the November elections, the impact of those elections on New York’s wage and hour (and other employment) laws remains to be seen, given that, for the first time since 2010, Democrats will control the state’s entire government, having gained a majority in the state Senate. Thus, expect some issues to get another look. In 2018, for example, the NYSDOL held hearings regarding possible elimination of the tip credit (*i.e.*, requiring employers of tipped employees to pay workers the full minimum wage, rather than permitting the employers, as currently is the law, to pay tipped employees a direct wage below minimum wage and then take a credit for tips received by employees to satisfy the minimum wage).

Minimum Wage Rates For 2019

All rates listed below become effective December 31, 2018.

New York (statewide unless listed below)	\$11.10
	\$12.75 (fast food workers)
Nassau/Suffolk/Westchester Counties	\$12.00
	\$12.75 (fast food workers)
New York City (>10 employees)	\$15.00
	\$15.00 (fast food workers)
New York City (≤10 employees)	\$13.50
	\$15.00 (fast food workers)

Minimum Weekly Salary To Qualify For Executive Or Administrative Overtime Exemption (Inclusive of board, lodging or other allowances)

New York (statewide unless listed below)	\$832.00
Nassau/Suffolk/Westchester Counties	\$900.00
New York City (>10 employees)	\$1,125.00
New York City (≤10 employees)	\$1,012.50

Tip Credits

The following tip credits may be taken *if* at least the hourly Cash Wage listed is received, the weekly average of tips is at least the hourly Tip Threshold listed, and the total of tips plus cash wages is at least the required minimum wage.

Note: *No tip credit* is allowed for fast food workers.

Service Employees (other than at resort hotels)

New York (statewide unless listed below)

- Cash wage \$9.25; tip credit \$1.85 assuming there is a \$6.25 tip threshold

Nassau/Suffolk/Westchester Counties

- Cash wage \$10.00; tip credit \$2.00 assuming there is a \$2.60 tip threshold

New York City (>10 employees)

- Cash wage \$12.50; tip credit \$2.50 assuming there is a \$3.25 tip threshold

New York City (≤10 employees)

- Cash wage \$11.25; tip credit \$2.25 assuming there is a \$2.95 tip threshold

Service Employees at resort hotels

New York (statewide unless listed below)

- Cash wage \$9.25; tip credit \$1.85 assuming there is a \$6.25 tip threshold

Nassau/Suffolk/Westchester Counties

- Cash wage \$10.00; tip credit \$2.00 assuming there is a \$6.75 tip threshold

New York City (>10 employees)

- Cash wage \$12.50; tip credit \$2.50 assuming there is a \$8.40 tip threshold

New York City (≤10 employees)

- Cash wage \$11.25; tip credit \$2.25 assuming there is a \$7.60 tip threshold

Food Service Workers

Food service workers must receive at least the listed hourly Cash Wage, the tip credit cannot exceed the Credit Rate listed below, and the total of tips plus wages must equal or exceed the hourly Total Rate listed.

New York (statewide unless listed below)

- Cash wage \$7.50; tip credit \$3.60 assuming there is a \$11.10 tip threshold

Nassau/Suffolk/Westchester Counties

- Cash wage \$8.00; tip credit \$4.00 assuming there is a \$12.50 tip threshold

New York City (>10 employees)

- Cash wage \$10.00; tip credit \$5.00 tip credit assuming there is a \$15.00 tip threshold

New York City (≤10 employees)

- Cash wage \$9.00; tip credit \$4.50 assuming there is a \$13.50 tip threshold

Next Steps

Employers should ensure that their non-exempt employees are paid in accordance with the new minimum wage rates noted above and that exempt employees subject to a salary basis requirement are paid at the noted minimum salary level. Additionally, employers should ensure that all employees receive updated notices of their new rates in accordance with the New York State Theft Prevention Act, which requires employers to provide notice of pay changes to employees.

Please contact Jackson Lewis if you have any questions or need assistance with this or other workplace requirements.

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