

# New York State Department of Labor Proposes New Salary Basis Thresholds for Exempt Employees

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On October 19, 2016, the New York State Department of Labor (“NYSDOL”) announced proposed amendments to the state’s minimum wage orders<sup>[1]</sup> (“Proposed Amendments”) to increase the salary basis threshold for executive and administrative employees.<sup>[2]</sup>

The NYSDOL announced the Proposed Amendments just over a month prior to the December 1, 2016, effective date of the U.S. Department of Labor’s (“USDOL’s”) [final rule](#) that amends the white-collar overtime exemptions. The USDOL’s final rule increases the salary threshold requirement for the executive, administrative, and professional exemptions from overtime requirements pursuant to the Fair Labor Standards Act (“FLSA”) from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). The salary thresholds set forth in the USDOL’s final rule will also automatically adjust for inflation every three years, beginning on January 1, 2020.

The current salary threshold for the administrative and executive exemptions in New York is \$675 (\$35,100 annually) per week throughout the state. In order to properly classify employees as exempt, employers must ensure that these employees are earning at least the salary basis threshold of the FLSA or the New York wage orders, whichever is higher. The NYSDOL has proposed the following increases to New York’s salary threshold for the executive and administrative exemptions:

- **Employers in New York City**

- Large employers (*11 or more employees*)

- \$825.00 per week (\$42,900 annually) on and after 12/31/16

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- \$975.00 per week (\$50,700 annually) on and after 12/31/17
  - \$1,125.00 per week (\$58,500 annually) on and after 12/31/18
  - Small employers (*10 or fewer employees*)
    - \$787.50 per week (\$40,950 annually) on and after 12/31/16
    - \$900.00 per week (\$46,800 annually) on and after 12/31/17
    - \$1,012.50 per week (\$52,650 annually) on and after 12/31/18
    - \$1,125.00 per week (\$58,500 annually) on and after 12/31/19
  - **Employers in Nassau, Suffolk, and Westchester Counties**
    - \$750.00 per week (\$39,000 annually) on and after 12/31/16
    - \$825.00 per week (\$42,900 annually) on and after 12/31/17
    - \$900.00 per week (\$46,800 annually) on and after 12/31/18
    - \$975.00 per week (\$50,700 annually) on and after 12/31/19
    - \$1,050.00 per week (\$54,600 annually) on and after 12/31/20
    - \$1,125.00 per week (\$58,500 annually) on and after 12/31/21
  - **Employers Outside of New York City, Nassau, Suffolk, and Westchester Counties**
    - \$727.50 per week (\$37,830 annually) on and after 12/31/16
    - \$780.00 per week (\$40,560 annually) on and after 12/31/17
    - \$832.00 per week (\$43,264 annually) on and after 12/31/18
    - \$885.00 per week (\$46,020 annually) on and after 12/31/19
    - \$937.50 per week (\$48,750 annually) on and after 12/31/20

Notably, the salary threshold for large employers in New York City will surpass the \$913 weekly salary threshold for the executive, administrative, and professional exemptions under the FLSA by December 31, 2017.

The publication of the Proposed Amendments opened a 45-day public comment period. During this period, the NYSDOL will accept comments on the Proposed Amendments until December 3, 2016. The NYSDOL will then review any comments and publish new wage orders. The Proposed

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Amendments, if finalized by the NYSDOL, would become effective on December 31, 2016.

## What New York Employers Should Do Now

- While preparing for the December 1, 2016, implementation of the USDOL's final rule, consider the NYSDOL's Proposed Amendment as well.
- Keep the Proposed Amendments in mind as you audit your workforce in light of the upcoming FLSA changes.
- Prepare for the salary changes at the federal and state levels throughout the next few years. Beginning January 1, 2020, federal salary thresholds will begin to be automatically adjusted for inflation (provided that the USDOL under the Trump administration does not amend this provision of the regulations). Depending on your location in New York State, the federal or state salary basis threshold may be higher.

***Marc-Joseph Gansah*** contributed to this post.

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[1] The Proposed Amendments would amend the salary basis threshold in the NYSDOL's wage orders covering the building services industry (12 N.Y.C.R.R. 141), miscellaneous industries and occupations (12 N.Y.C.R.R. 142), nonprofitmaking institutions (12 N.Y.C.R.R. 143), and the hospitality industry (12 N.Y.C.R.R. 146).

[2] The NYSDOL's wage orders do not provide a salary requirement for the professional employee exemption (including both the learned professional and creative exemptions).

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