

New Year, New Rules for Employers Doing Business in New York

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Last year the New York legislature and New York Department of Labor amended several employment laws implementing changes that took effect at the end of 2016 or are set to take effect early this year. This post summarizes the new and updated legal requirements included in those amendments to help New York employers comply in 2017.

Minimum Wage Increases

Following a push by New York Governor Andrew Cuomo to increase the state's minimum wage, wage rates for New York employees will rise statewide in 2017. Starting on December 31, 2016, the minimum wage for all New York employees increased to at least \$9.70 per hour from \$9.00. The scope of the minimum wage increase for some employees varied depending on the county in which an employee works as well as the size of the employer's business. For example, for employees in New York City who are employed by a company that has 11 or more employees, the minimum wage increased to \$11 per hour at the end of 2016. However, for employees in New York City who are employed by a company with 10 or fewer employees, the minimum wage increase was smaller, with the hourly minimum wage rising to \$10.50 as of December 31, 2016. For employees who work in the New York City commuter counties of Nassau, Suffolk, and Westchester, the minimum wage increased to \$10 per hour at the end of 2016.

In addition to the minimum wage increase applicable to all employees statewide, the New York State Department of Labor ("NYSDOL") will also continue its increase of the minimum wage for employees at certain fast food chain restaurants in New York state in 2017 as part of its 2015 wage order to incrementally establish a \$15 minimum wage for fast food workers. Pursuant to the wage order, on December 31, 2016, the minimum wage for fast food workers rose to \$10.75 outside New York City and \$12.00 inside New York City. The wage order will ultimately increase the minimum wage to \$15 by December 31, 2018 for fast food workers in New York City and by July 1, 2021 for fast food workers elsewhere in New York State.

These minimum wage increases require New York employers to monitor their payroll practices

closely to ensure they comport with the new minimum wage requirements and properly calculate the overtime pay of their nonexempt employees. Additionally, an employee's eligibility to receive an extra hour's pay pursuant to the "spread of hours" rules will be impacted by the changes in minimum wage.

Increases to Overtime Exempt Salary Threshold

While the U.S. Department of Labor's plan to increase the salary threshold for overtime exemptions under the federal Fair Labor Standards Act ("FLSA") to \$913 per week was halted by a November 2016 nationwide preliminary injunction, New York employers still need to comply with similar state regulations in 2017. As previously discussed [here](#), in October 2016, the NYSDOL proposed incremental increases to the salary threshold for the overtime exempt classification under New York state law. The incremental increases differ depending on the size and location of the employer within New York state, with the salary thresholds increasing more rapidly for "large employers" – those with 11 or more employees – than for "small employers" – those with 10 or fewer employees. In addition, salary thresholds increase more rapidly in New York City than in surrounding and upstate counties. Effective December 31, 2016, the overtime exempt salary thresholds increased to \$825 per week for large New York City employers; \$787 per week for small New York City employers; \$750 per week for employers in Nassau, Suffolk, and Westchester Counties; and \$727 per week for all other New York state counties.

New Notice and Consent Requirements for Wage Payment Via Direct Deposit and/or Payroll Debit Card

Starting March 7, 2017, New York employers who pay wages via direct deposit and/or payroll debit card will need to comply with more stringent requirements governing the methods available to pay most "non-exempt" employees. As discussed in more detail [here](#), the new NYSDOL regulations apply to all employees who work in New York state with the exception of employees who work on farms not connected to a factory and executive, administrative and professional employees – essentially overtime-exempt, white collar employees – earning in excess of \$900 per week (or \$46,800 annually).

Under the new regulations, employers will need to obtain signed consents from employees (which employees are permitted to withdraw at any time) prior to issuing payments via direct deposit or debit card. The regulations also require employers to issue a written notice to employees describing, among other things, all of the employees' options for receiving wages as well as the protections available to them. Finally, the regulations will impose several other requirements specific to payroll debit card programs, including access for employees to an ATM located within a reasonable travel distance to their home or work location, the ability for employees to make unlimited, free withdrawals, and protection for employees from certain fee charges, among other items listed in the regulations.

Freelancer Protection

On November 16, 2016, New York City Mayor Bill de Blasio signed into law a bill establishing and enhancing protections for freelance workers. The new law, often referred to as the "Freelance Isn't Free Act," will go into effect on May 15, 2017. It requires hiring parties to provide a written contract to freelancers for work worth at least \$800, including multiple projects taking place over a 120-day period, and to ensure that payment for freelance work is timely and made in full. The law also prevents hiring parties from retaliating against freelance workers in any way for exercising or

attempting to exercise their rights under the law. The bill creates penalties for violations by hiring parties, including statutory damages, double damages, injunctive relief, and attorneys' fees. Hiring parties can be subject to a civil penalty of up to \$25,000 if they are found to be engaging in a pattern or practice of violating the law.

Conclusion

Employers in New York state paying minimum wage to any of their employees should review the new minimum wage requirements and ensure that the proper increases are made. In addition, employers should review their employment policies and pay structures to ensure compliance with each of the legislative changes addressed above and implement any necessary changes.

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