



Electronic Dispatch

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NEW YORK INCREASES NON-EXEMPT MINIMUM WAGE AND MINIMUM SALARY TO QUALIFY FOR THE EXECUTIVE AND ADMINISTRATIVE EXEMPTIONS

The minimum salary that an employee must receive to qualify for the executive or administrative exemption in New York increased to \$536.10 per week as of January 1, 2007. In addition, the minimum wage for non-exempt employees in New York increased to \$7.15 per hour. Because these amounts differ from the exempt salary and minimum wage amounts under the federal Fair Labor Standards Act ("FLSA"), employers in New York should evaluate their pay practices to ensure compliance with both state and federal law. This Information Memo provides a brief summary of the federal and state laws pertaining to non-exempt minimum wage and exempt salary amounts.

Federal Law

Under the FLSA, non-exempt employees must be paid a minimum wage of \$5.15 per hour for all hours up to 40 in a work week, and must be paid one and one-half times their "regular rate" for all hours worked in excess of 40 in a work week. The FLSA also establishes categories of "exempt" employees, to whom the FLSA overtime obligations do not apply. The most commonly applied exemptions under the FLSA are the executive, administrative, and professional exemptions. Employees who perform primarily executive, administrative, or professional duties and who are compensated on a salary basis with a salary of at least \$455.00 per week qualify for these exemptions.

New York Law

New York has its own minimum wage and overtime laws, which, for the most part, have historically been consistent with federal law. However, New York's minimum wage has been higher than the federal minimum wage since January 1, 2005, when a minimum wage of \$6.00 per hour was implemented for non-exempt employees in New York. Effective January 1, 2006, the New York minimum wage went up to \$6.75 per hour. As of January 1, 2007, the New York minimum wage went up to \$7.15 per hour.

New York also considers executive, administrative, and professional employees to be exempt from the overtime requirements of state law. The duties tests to qualify for these exemptions are extremely similar to the duties tests under the FLSA. However, the salary test is different. As noted above, the minimum salary that an employee must receive to qualify for one of these exemptions under federal law is \$455.00 per week. Effective January 1, 2007, under New York law, an employee must receive at least \$536.10 per week (and must meet the duties test) to qualify for the executive or administrative exemption. New York does not mandate a minimum weekly salary for an employee to qualify for the professional exemption.

With the differing federal and state exemption amounts, there are essentially three categories of employees: (1) employees who are non-exempt under both federal and state law; (2) employees who are exempt under both federal and state law; and (3) employees who are exempt under federal law, but non-exempt under state law, because they meet the duties test for the executive or administrative exemption, but only meet the salary test under federal law.

An employer's overtime obligations toward employees in the first category are the same under federal and state law. Both federal and state law require that an employer pay non-exempt employees one and one-half times their regular rate for hours worked in excess of 40 in a work week.

An employer's overtime obligations toward employees in the second category are also relatively straightforward. Employees who are exempt under both federal and state law are not entitled to any overtime compensation. An exempt employee's weekly salary is intended to cover all hours worked in a work week.



The twist under New York law comes when an employee meets the duties test for the executive or administrative exemption, but meets only the federal salary test. In such a case, the New York General Wage Order, as interpreted by the New York State Department of Labor ("NYSDOL"), requires that the employee receive one and one-half times the minimum wage for each overtime hour worked in a given work week, up to a cap of \$536.10 in total wages for the work week. For example, an employee who receives a salary of \$500.00 per week, meets the executive exemption duties test, and works 50 hours in a given work week, should be paid under the following methodology:

- The \$500.00 weekly salary for 50 hours equates to an hourly rate of \$10.00
- \$10.00 per hour should be paid for the first 40 hours, yielding \$400.00 in straight-time wages
- The 10 overtime hours should be paid at \$10.725 per hour (i.e., one and one-half times the minimum wage of \$7.15 per hour, rather than one and one-half times the employee's regular rate), for an overtime total of \$107.25
- Total weekly wages are \$507.25 (i.e., \$400.00 plus \$107.25), meaning that an additional amount of \$7.25 over and above the \$500.00 weekly salary is due to the employee under the New York General Wage Order

Significantly, under this interpretation, overtime liability for employees exempt under federal law, but non-exempt under state law, is capped once the weekly salary reaches \$536.10.

Unfortunately, these calculations are rather complicated. In addition, this interpretation of the New York General Wage Order is based on opinions issued by the NYSDOL years ago. New York employers are advised to carefully analyze their payment schemes with respect to employees who are exempt under federal law, but who are non-exempt under state law. Failure to satisfy both state and federal requirements could subject employers to potential liability for unpaid wages, liquidated damages, civil fines, and reimbursement of attorneys' fees to claimants who commence litigation.

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