

NEWS ALERT

LABOR & EMPLOYMENT



Should New York Employers Care that the Obama Administration’s Final Rule is No More?

By Salvatore G. Gangemi | September 14, 2017

To be exempt from state and federal overtime requirements, an employee must satisfy both a salary test and a duties test. In May 2016, we [blogged](#) about the Department of Labor’s issuance of a Final Rule modifying the so-called “white-collar” employee exemptions to overtime under the federal Fair Labor Standards Act (“FLSA”). The proposed Final Rule increased the minimum salary that must be paid to exempt employees from \$455 per week (\$23,660 per year) to approximately \$913 per week (\$47,476 per year), and provided for subsequent annual revisions/increases. The Final Rule did not make changes to the duties test, which still must be satisfied for the exemptions to apply. The Final Rule was supposed to be effective on December 1, 2016, but on November 22, 2016, a federal court in Texas issued a [nationwide preliminary injunction blocking the Final Rule](#) from taking effect. On September 6, 2017, that injunction was made permanent, and the minimum salary threshold under federal law will remain at \$455 per week at least until new regulations are issued by the Trump administration’s Department of Labor.

Despite the low salary threshold under federal law, employers in many states, including New York, are still required to pay substantially more in salary under state and local wage and hour laws. At around the time the Final Rule was to take effect, New York State adopted final regulations providing for annual increases to the minimum salary threshold necessary for exemption under New York’s Minimum Wage Act. Those annual increases took effect on December 31, 2016, with further increases scheduled for December 31, 2017.

The following chart illustrates these scheduled increases over the next few years:

MINIMUM SALARY REQUIRED	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21
NYC – LARGE EMPLOYERS OF 11 OR MORE	\$825.00	\$975.00	\$1,125.00	\$1,125.00	\$1,125.00	\$1,125.00
NYC – SMALL EMPLOYERS OF 10 OR LESS	\$787.50	\$900.00	\$1,012.50	\$1,125.00	\$1,125.00	\$1,125.00
LONG ISLAND & WESTCHESTER	\$750.00	\$825.00	\$900.00	\$975.00	\$1,050.00	\$1,125.00
REMAINDER OF NEW YORK STATE	\$727.50	\$780.00	\$832.50	\$885.00	\$937.50	TBD

As of December 31, 2017, a large employer (one having 11 or more employees) in New York City will have to pay its exempt employees at least \$975.00 per week, which is even higher than the amount under the voided federal Final Rule. By December 31, 2018, that same employer will be required to pay \$1,125.00 per week to its white collar employees. Although the Trump administration will ultimately revise the federal minimum salary thresholds to keep pace with inflation, those inflation-based increases would still be substantially less than what New York law requires.

Because states are entitled to set a higher minimum salary threshold than what federal law requires, an employer with employees in different states will have to pay those employees differently even though all may be performing the same duties and functions. In New York, unless the employee is earning the minimum salary threshold required under New York Law, an employer will have to pay him or her overtime for hours worked over 40 in a workweek, while paying similarly situated employees in another state just his or her salary.

For the time being, employers that do business in New York will have to navigate the different and complex requirements imposed by state and local law, and as a result, have no reason to celebrate the death of the Final Rule.

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