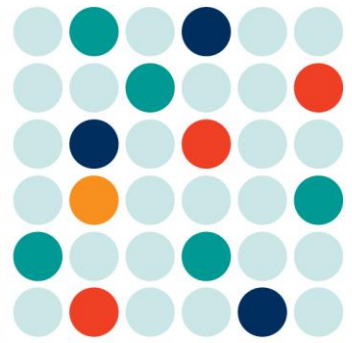


LEGAL UPDATE

November 2016

By: Pryor Cashman's Labor & Employment Group



REMINDER TO NEW YORK EMPLOYERS: CHANGES TO FEDERAL AND NEW YORK STATE WAGE AND HOUR LAWS GO INTO EFFECT IN DECEMBER 2016

In December 2016, new overtime and minimum wage laws go into effect on the federal level and in New York State. At the federal level, the U.S. Department of Labor's new overtime rule, which goes into effect on December 1, 2016, increases the salary threshold that determines whether employees are exempt from being paid overtime. On December 31, 2016, the first of New York's incremental minimum wage increases goes into effect, which will ultimately increase New York's minimum wage rate to \$15.00 per hour by 2021.

The New Minimum Salary Threshold for Overtime Exemptions

The new federal overtime rule increases the salary and compensation levels for qualification for the executive, administrative and professional exemptions from overtime, known as the "White Collar Exemptions." For an employee to fall into a White Collar Exemption, and thus not be eligible for overtime, an employee must have certain types of duties (the "Duties Test") and make a certain amount of money (the "Salary Test"). While the new overtime rule does not change the Duties Test for the White Collar Exemptions, it changes the Salary Test threshold from \$455.00 per week, or \$23,660.00 per year, to \$913.00 per week, or \$47,476.00 per year. This salary increase will cause many more employees to be eligible for overtime, unless their base salary is raised above \$47,476 per year. The new overtime rule allows employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the new salary level threshold.

The new overtime rule also increases the minimum

annual salary threshold for an employee to qualify for exemption from overtime pay under the "highly compensated employee" exemption. Currently, a "highly compensated employee" is one who earns at least \$100,000.00 per year. As of December 1, 2016, the minimum salary needed to qualify for the "highly compensated employee" exemption increases to a minimum of \$134,004.00 per year. These changes, however, do not affect the exemptions for outside sales or retail sales employees.

It should be noted that 21 states have filed lawsuits challenging the new overtime rule. Nevertheless, as of now, the new rule is still set to take effect on December 1, 2016. We can also expect these changes to come under further scrutiny in the new Trump Administration.

For the time being, employers, with the assistance of labor and employment counsel, should assess whether any of their currently exempt employees will be affected by this new salary threshold. Employers may decide to increase the salaries of their affected employees so that they can retain their exempt status. Alternatively, employers may decide to reclassify these employees as nonexempt and provide them with overtime compensation in accordance with the law. An employer who changes an employee's compensation level or reclassifies an employee will likely need to provide such employee with a written notice of this change under New York law.

New York's Increases to the Minimum Wage

Starting December 31, 2016, New York's minimum wage will increase in phases over several years until the minimum wage reaches \$15.00 per hour statewide by 2021. The amount of each increase will vary based on the employer's size, location and industry. Consequently, beginning on December 31, 2016, there will be different minimum wages throughout New York State.

New York City: The minimum wage for New York City businesses employing 11 or more employees will rise to \$11.00 per hour on December 31, 2016, with \$2.00 increases each year until 2018, when the minimum wage will reach \$15.00 per hour. For workers in New York City employed by businesses with 10 or fewer employees, the minimum wage will rise more gradually, starting at \$10.50 per hour on December 31, 2016. Thereafter, the minimum wage will increase by \$1.50 per hour each year until 2019, when the minimum wage will reach \$15.00 per hour.

Long Island and Westchester County: The minimum wage for workers on Long Island and in Westchester will increase to \$10.00 per hour on December 31, 2016. The minimum wage will then increase by \$1.00 per hour each year until the minimum wage reaches \$15.00 per hour in 2021.

Other Parts of New York State: For the rest of New York State, the minimum wage will rise to \$9.70 per hour on December 31, 2016. It will increase by 70 cents each year thereafter until the minimum wage reaches \$12.50 per hour in 2020. Subsequently, the minimum wage will continue to increase pursuant to a "schedule" to be determined in consultation with the New York State Department of Labor until it ultimately reaches \$15.00 per hour.

New York Fast Food Workers: Fast-food workers in New York City are subject to different minimum wage rates. The minimum wage for fast-food workers will rise to \$12.00 per hour on December 31, 2016, \$13.50 per hour at the end of 2017, and will reach \$15.00 per hour by 2018. Fast-food workers outside of New York City will earn \$10.75 per hour at the end of 2016, with \$1.00 increases annually for the next three years until the minimum wage reaches \$14.50 in 2020. On July 1, 2021, the

minimum wage will increase by 75 cents and fast-food workers everywhere in the state will earn \$15.00 per hour.

Conclusion

Employers should consult with counsel to ensure compliance with these significant changes in the law of workplace compensation, especially with respect to the new salary threshold for overtime exemptions. Please feel free to reach out to Pryor Cashman LLP with any questions.

If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact

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