

## New York Increases Minimum Salary Level for Some Exempt Employees

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While the federal Department of Labor's new overtime rule remains enjoined pending an appeal to the U.S. Court of Appeals for the Fifth Circuit, the New York Department of Labor (NYDOL) has moved forward with its own changes to the state's overtime rules. Under a wage order that was finalized on December 28, 2016, the salary threshold applicable to the executive and administrative exemptions to New York's overtime requirements will increase. The new rule goes into effect on December 31, 2016.

Currently, employees must earn \$675.00 per week to qualify for the state administrative and executive exemptions. Under the NYDOL's new wage order (which can be **found here**), the salary threshold will increase for all employers, with the size of the increase varying depending on geographic location and employer size. In New York City, the new threshold will be \$825.00 per week for employers who employ 11 or more people at one time during the calendar year, and \$787.50 per week for employers who employ 10 or fewer people. In Long Island and Westchester County, the threshold will be \$750.00 for all employers. For the remainder of the state, the threshold will be \$727.50 per week.

Professional employees are not covered by the new wage order; unlike the federal exemption, the New York exemptions for professional employees do not include a salary requirement.

The wage order also establishes annual increases to each threshold through December 31, 2021, by which time all New York City, Long Island, and Westchester employers will be subject to a threshold of \$1,125.00 per week. Large employers (i.e., those with 11 or more employees) in New York City reach this threshold first, on December 31, 2018, with small employers following a year later, and Long Island and Westchester reaching the threshold on December 31, 2021. The remainder of New York State reaches a maximum threshold of \$937.50 effective December 31, 2020, with the threshold for the year after to be decided at a later date.

New York employers with exempt administrative or executive employees earning less than the applicable new threshold should review their classification of these employees before the rule goes into effect on December 31. To maintain the employee's exempt status, the employer will need to raise the salary paid to the employee above the threshold. Otherwise, employers will have to transition these employees to a non-exempt status and begin paying them overtime for hours worked in a work week in excess of 40.

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