

## NEW YORK STATE CHANGES MINIMUM WAGE AND OVERTIME LAWS

Recent amendments to New York State's Minimum Wage Orders and Labor Law will require most employers in the state to review and modify their employee compensation practices. The revised requirements affect both current employees and new hires.

### REVISED MINIMUM WAGE ORDERS

On July 24, 2009, the federal minimum wage increased to \$7.25 per hour for most employees. This amount exceeded the prior New York State minimum wage, which was \$7.15 per hour. As a result, the New York Department of Labor has issued new Minimum Wage Orders, which raise certain rate requirements regarding minimum wage and overtime compensation.

For most non-tipped employees, the New York State minimum wage is now equal to the federal minimum wage of \$7.25. The weekly salary required as a component towards satisfying the elements of the administrative and executive exemptions from New York State's overtime requirements has also increased to \$543.75 (from \$536.10). Employers wishing to preserve these overtime exemptions, if otherwise applicable, should immediately review affected employees' salaries and adjust them accordingly.

Certain categories of employees, including tip-earning food service workers, have additional minimum wage requirements under the New York State Minimum Wage Orders.

Food service workers are now allowed a tip credit of up to \$2.60 per hour (an increase from \$2.55 per hour). As a result, such employees must now be paid a minimum wage of \$4.65 per hour by their employers (an increase from \$4.60 per hour). Employers must ensure that the combination of tips plus wages for tipped food service workers reaches a total of at least \$7.25 per hour. In other words, tip-earning food service workers must earn at least an additional \$2.60 per hour in tips, or be paid the difference necessary to reach the mandatory minimum of \$7.25 per hour. Alternative tip allowances, which vary depending on multiple factors, apply to tipped service employees who do not serve food.

The new Minimum Wage Orders modify the per hour wage allowances for meals, lodging, and certain other non-cash benefits. The uniform maintenance rates (for employers who do not launder their employees' required uniforms) have also increased to: \$9.00 per week for employees working more than 30 hours (an increase from \$8.90 per week), \$7.10 per week for employees working more than 20 hours and less than 30 hours (an increase from \$7.00 per week), and \$4.30 per week for employees working 20 hours or less (an increase from \$4.25).

In addition to the general Minimum Wage Order, New York State also maintains industry-specific regulations for the Restaurant, Hotel, Building Services, and Farming industries. Employers in those industries must comply with the applicable Minimum Wage Order(s). The New York State Department of Labor has assembled a Wage Board that is currently contemplating the implementation of further revisions to the Restaurant and Hotel industry Minimum Wage Orders. Among other potential changes, the Wage Board is considering whether to adopt a single wage order covering those related hospitality service industries.

The new Minimum Wage Orders went into effect as of July 24, 2009.

### **NEW OBLIGATIONS REGARDING NOTICE OF WAGES**

A recent amendment to Section 195(1) of the New York State Labor Law will require covered employers to have newly hired employees sign written acknowledgements that they have received written notice of their wage rates. (Pursuant to Labor Law § 190, "governmental agencies" are not subject to the requirements of Labor Law § 195.)

Labor Law § 195(1) previously required covered employers to notify employees at the time of hiring of their rate of pay and the regular pay date. As amended, the law will now require that such notice be made in writing and that it include both the regular hourly rate and the overtime rate of pay for employees eligible for overtime compensation (i.e., non-exempt employees).

These amendments are primarily intended to increase transparency regarding overtime rates, especially for non-exempt, salaried employees. Under the New York State and federal overtime laws and regulations, the normal overtime rate for many hourly employees is one and a half times the regular hourly rate. To the contrary, the calculation of overtime compensation for salaried employees often depends on a number of factors. In fact, overtime rates for many employees vary from week to week based on the number of hours worked, the nature of the compensation paid, and other considerations.

Employers will need to tailor the contents of their written notices provided to individual new hires based upon the manner in which they will be compensated as employees. In addition to civil penalties provided under the New York State Labor Law, any inaccurate wage rate representations made in the required notices could be used against the employer by employees seeking unpaid wages. Thus, employers must determine the appropriate overtime treatment of all employees at the time of hire for purposes of the required notice and acknowledgement.

Although not specifically covered by Labor Law § 195's written notice and acknowledgement requirements, any changes to regular and overtime wage rates during the course of employment should also be effectively communicated to employees. Labor Law § 195 already requires that employees be provided with a statement upon every wage payment that lists gross wages, deductions, and net wages. Employees are also entitled, upon request, to obtain an explanation of how their wages were calculated.

The amended law allows the New York State Department of Labor ("NYS DOL") to establish parameters regarding the content and form of the employee's written acknowledgement. It is not yet known whether the NYS DOL will also set forth requirements with respect to the employer's written notice.

Governor Paterson signed the amendments into law on July 28, 2009. The new requirements apply with respect to all employees hired on or after **October 26, 2009**.

### WHAT DO EMPLOYERS NEED TO DO NOW?

Failure to comply with New York State's wage laws could result in costly litigation, investigation by the NYS DOL, and/or statutory penalties. Employers are strongly encouraged to review their current compensation practices immediately to ensure compliance with these recent amendments. Employers also must meet the new minimum wage requirements and prepare to obtain acknowledgements of written notice of wages from newly hired employees. Because improper classification for overtime purposes often reflects either a significant liability exposure or avoidable labor costs, employers should also take this opportunity to reevaluate the overtime classifications of employees who may be eligible for applicable exemptions.

If you have any questions regarding the amendments, please contact Randall M. Odza (716.843.3877; rodza@jaeckle.com) or Scott P. Horton (716.843.3949; shorton@jaeckle.com).

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