

Wage Orders Likely Pose Compliance Issues for New York Employers

By Jeffrey W. Brecher, Richard I. Greenberg, Daniel J. Jacobs, Jonathan M. Kozak and Noel P. Tripp

October 20, 2016

For New York employers, many wage-and-hour obligations are not set forth in the statute. Rather, they are outlined in Wage Orders promulgated by the New York State Department of Labor. The New York DOL has published proposed modified Wage Orders in the State Register, implementing changes to the existing Wage Orders based on the recently passed increase to the state minimum wage. These Orders – Building Services, Hospitality, Miscellaneous Industries and Occupations, and Agriculture – which are effective December 31, 2016 (absent unanticipated delay), mandate review of wage-and-hour practices by all New York employers, especially those with operations throughout the state, as many of the proposed modifications derive from the recently enacted state minimum wage legislation which provides for [different schedules for the increased minimum wage throughout the state](#).

Some of the most significant proposed changes and the manner in which they differ across the state are summarized below.

Salary Basis

While much attention has been paid to the [upcoming increase of the minimum salary for exempt white collar employees under federal law](#), consistent with the Department's past practice, the Wage Orders set the minimum salary for exempt executives and administrators (there is no minimum salary requirement for professionals under the Wage Orders) at 75 times the state minimum wage. With the state minimum wage increasing to \$15.00 per hour in most of the state (on different timetables, depending on location) the state salary requirement will rise above the new federal standard. For "large" New York City employers with more than 10 employees, this will occur on December 31, 2017. The following summarizes the increased minimum salary requirements throughout the state over the next few years:

(1) New York City for

- (i) Large employers of 11 or more employees
 - \$825.00 per week on and after 12/31/16;
 - \$975.00 per week on and after 12/31/17;
 - \$1,125.00 per week on and after 12/31/18;

- (ii) Small employers of 10 or fewer employees

Meet the Authors



Jeffrey W. Brecher

Principal
Long Island

631-247-4652
BrecherJ@jacksonlewis.com



Richard I. Greenberg

Principal
New York

212-545-4080
GreenbeR@jacksonlewis.com



Daniel J. Jacobs

Principal
New York

212-545-4049
JacobsD@jacksonlewis.com

- \$787.50 per week on and after 12/31/16;
- \$900.00 per week on and after 12/31/17;
- \$1,012.50 per week on and after 12/31/18;
- \$1,125.00 per week on and after 12/31/19;

(2) Remainder of downstate (Nassau, Suffolk, and Westchester counties)

- \$750.00 per week on and after 12/31/16;
- \$825.00 per week on and after 12/31/17;
- \$900.00 per week on and after 12/31/18;
- \$975.00 per week on and after 12/31/19;
- \$1,050.00 per week on and after 12/31/20;
- \$1,125.00 per week on and after 12/31/21;

(3) Remainder of state (outside of New York City, Nassau, Suffolk, and Westchester counties)

- \$727.50 per week on and after 12/31/16;
- \$780.00 per week on and after 12/31/17;
- \$832.00 per week on and after 12/31/18;
- \$885.00 per week on and after 12/31/19;
- \$937.50 per week on and after 12/31/20.

Uniform Allowance

The uniform allowance also varies throughout the state. For example, under the Hospitality Wage Order, the following weekly uniform maintenance pay requirements apply (the “High” rate applicable to employees who work over 30 hours per week; “Medium” rate for employees who work more than 20, but less than 30 hours per week; and the “Low” rate for employees who work 20 hours or less per week):

(1) New York City for

(i) Large employers of 11 or more employees

- \$13.70 High, \$10.80 Medium, \$6.55 Low on and after 12/31/16;
- \$16.20 High, \$12.80 Medium, \$7.75 Low on and after 12/31/17;
- \$18.65 High, \$14.75 Medium, \$8.90 Low on and after 12/31/18;

(ii) Small employers of 10 or fewer employees

- \$13.05 High, \$10.35 Medium, \$6.25 Low on and after 12/31/16;
- \$14.95 High, \$11.80 Medium, \$7.15 Low on and after 12/31/17;
- \$16.80 High, \$13.30 Medium, \$8.05 Low on and after 12/31/18;
- \$18.65 High, \$14.75 Medium, \$8.90 Low on and after 12/31/19;

(2) Remainder of downstate (Nassau, Suffolk, and Westchester counties)

- \$12.45 High, \$9.85 Medium, \$5.95 Low on and after 12/31/16;
- \$13.70 High, \$10.80 Medium, \$6.55 Low on and after 12/31/17;
- \$14.95 High, \$11.80 Medium, \$7.15 Low on and after 12/31/18;
- \$16.20 High, \$12.80 Medium, \$7.75 Low on and after 12/31/19;
- \$17.40 High, \$13.75 Medium, \$8.30 Low on and after 12/31/20;
- \$18.65 High, \$14.75 Medium, \$8.90 Low on and after 12/31/21;

(3) Remainder of state (outside of New York City, Nassau, Suffolk, and Westchester counties)

- \$12.05 High, \$9.55 Medium, \$5.75 Low on and after 12/31/16;
- \$12.95 High, \$10.25 Medium, \$6.20 Low on and after 12/31/17;
- \$13.80 High, \$10.90 Medium, \$6.60 Low on and after 12/31/18;
- \$14.70 High, \$11.60 Medium, \$7.00 Low on and after 12/31/19;
- \$15.55 High, \$12.30 Medium, \$7.45 Low on and after 12/31/20.



Jonathan M. Kozak

Principal
White Plains

914-872-6885
Jonathan.Kozak@jacksonlewis.com



Noel P. Tripp

Principal
Long Island

631-247-4661
TrippN@jacksonlewis.com

Under the Hospitality Order, employers must ensure employees who maintain uniforms receive these monies on top of wages to cover this expense. Under the other Orders, as it is an allowance against minimum wage, any wages paid above minimum set off this obligation. Ambiguity persists regarding the precise interpretation of the term “uniform,” though courts have generally considered logo attire to constitute same.

Tip Credit

The tip credit that can be taken against the minimum wage for employees who customarily and regularly receive tips also will vary throughout the state. For example, for food service workers under the Hospitality Order, the minimum cash wage, permissible credits, and applicable totals would be:

(1) New York City for

(i) Large employers of 11 or more employees

- \$7.50 Cash Wage, \$3.50 Credit, \$11.00 Total on and after 12/31/16;
- \$8.65 Cash Wage, \$4.35 Credit, \$13.00 Total on and after 12/31/17;
- \$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after 12/31/18;

(ii) Small employers of 10 or fewer employees

- \$7.50 Cash Wage, \$3.00 Credit, \$10.50 Total on and after 12/31/16;
- \$8.00 Cash Wage, \$4.00 Credit, \$12.00 Total on and after 12/31/17;
- \$9.00 Cash Wage, \$4.50 Credit, \$13.50 Total on and after 12/31/18;
- \$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after 12/31/19;

(2) Remainder of downstate (Nassau, Suffolk, and Westchester counties)

- \$7.50 Cash Wage, \$2.50 Credit, \$10.00 Total on and after 12/31/16;
- \$7.50 Cash Wage, \$3.50 Credit, \$11.00 Total on and after 12/31/17;
- \$8.00 Cash Wage, \$4.00 Credit, \$12.00 Total on and after 12/31/18;
- \$8.65 Cash Wage, \$4.35 Credit, \$13.00 Total on and after 12/31/19;
- \$9.35 Cash Wage, \$4.65 Credit, \$14.00 Total on and after 12/31/20;
- \$10.00 Cash Wage, \$5.00 Credit, \$15.00 Total on and after 12/31/21;

(3) Remainder of state (outside of New York City, Nassau, Suffolk, and Westchester counties)

- \$7.50 Cash Wage, \$2.20 Credit, \$9.70 Total on and after 12/31/16;
- \$7.50 Cash Wage, \$2.90 Credit, \$10.40 Total on and after 12/31/17;
- \$7.50 Cash Wage, \$3.60 Credit, \$11.10 Total on and after 12/31/18;
- \$7.85 Cash Wage, \$3.95 Credit, \$11.80 Total on and after 12/31/19;
- \$8.35 Cash Wage, \$4.15 Credit, \$12.50 Total on and after 12/31/20.

Further, the Hospitality Order reintroduces separate tip credits that apply to food service workers (as noted above) and service workers, such as delivery persons. New York employers must ensure the appropriate rates are utilized. For service employees, the Hospitality Order also imposes minimum tip thresholds that are greater than the amount of the permissible credit.

Meal Credit

Similar variations for meal credits would be effective throughout state. For example, under the Hospitality Order, the permissible credits would be the following (*the “Food Service” rate is applicable to food service workers, “Service” rate is applicable to service employees, and “Other” rate is applicable to non-service employees*):

(1) New York City for

(i) Large employers of 11 or more employees

- \$2.85 Food Service, \$3.05 Service, \$3.80 Other per meal on and after 12/31/16;
- \$3.25 Food Service, \$3.60 Service, \$4.50 Other per meal on and after 12/31/17;
- \$3.60 Food Service, \$4.15 Service, \$5.15 Other per meal on and after 12/31/18;

(ii) Small employers of 10 or fewer employees

- \$2.80 Food Service, \$2.90 Service, \$3.60 Other per meal on and after 12/31/16;
- \$3.05 Food Service, \$3.35 Service, \$4.15 Other per meal on and after 12/31/17;
- \$3.35 Food Service, \$3.75 Service, \$4.65 Other per meal on and after 12/31/18;
- \$3.60 Food Service, \$4.15 Service, \$5.15 Other per meal on and after 12/31/19;

(2) Remainder of downstate (Nassau, Suffolk, and Westchester counties)

- \$2.70 Food Service, \$2.80 Service, \$3.45 Other per meal on and after 12/31/16;
- \$2.85 Food Service, \$3.05 Service, \$3.80 Other per meal on and after 12/31/17;
- \$3.05 Food Service, \$3.35 Service, \$4.15 Other per meal on and after 12/31/18;
- \$3.25 Food Service, \$3.60 Service, \$4.50 Other per meal on and after 12/31/19;
- \$3.45 Food Service, \$3.90 Service, \$4.80 Other per meal on and after 12/31/20;
- \$3.60 Food Service, \$4.15 Service, \$5.15 Other per meal on and after 12/31/21;

(3) Remainder of state (outside of New York City, Nassau, Suffolk, and Westchester counties)

- \$2.65 Food Service, \$2.70 Service, \$3.35 Other per meal on and after 12/31/16;
- \$2.75 Food Service, \$2.90 Service, \$3.60 Other per meal on and after 12/31/17;
- \$2.90 Food Service, \$3.10 Service, \$3.80 Other per meal on and after 12/31/18;
- \$3.00 Food Service, \$3.30 Service, \$4.05 Other per meal on and after 12/31/19;
- \$3.15 Food Service, \$3.45 Service, \$4.30 Other per meal on and after 12/31/20.

We will keep you apprised of the status of these proposed Wage Orders. This is only a summary of the proposed changes. Counsel should be consulted to analyze your organization's obligations under the relevant Wage Order. As always, do not hesitate to contact the Jackson Lewis attorney with whom you regularly work if you have any questions.

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