

DATE: December 29, 2016

TO: Hotel Association of New York City, Inc.
General Members
General Managers, Human Resources Directors and Controllers

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: New York Adopts Rule Raising the Salary Thresholds for Executive and Administrative Exempt Employees

On December 28, 2016, the New York State Department of Labor (“NYSDOL”) adopted its’ October 19, 2016 proposed amendments to the State’s minimum wage orders that raise the minimum wage and increase the salary basis threshold for executive and administrative employees (the “Rules”). The Rules do not make any changes to the job duties test and become effective in only two days -- on December 31, 2016.

Known as the white collar exemption, both New York State and the Fair Labor Standards Act (the “FLSA”) exempt certain employees from overtime pay who qualify as either an executive, administrative, or professional employee. In order to properly classify employees as exempt, employers must ensure that these employees are earning at least the salary basis threshold of the FLSA or the New York wage orders, whichever is higher.¹ The Rules increase the salary basis threshold for the executive and administrative employees in New York. The current salary basis threshold for the administrative and executive exemptions in New York is \$675 per week (\$35,100 annually) throughout the State. Because the salary threshold of exempt employees is tied to the minimum wages in the state (*i.e.*, salaries must be 75 times the minimum

¹ In contrast to the FLSA, the NYSDOL does not have a minimum salary requirement for employees falling within the professional exemption, so employers should look to the FLSA for the required salary threshold.

wage), the Rules now delineate salary thresholds based on region and size of employer as set forth below.²

The Rules allow employers to include board, lodging, and other allowances and facilities into the salary calculation. The new salary thresholds for the executive and administrative exemptions are as follows:

1. Employers in New York City

- **Large employers** (*11 or more employees*)
 - \$825.00 per week (\$42,900 annually) on and after 12/31/16
 - \$975.00 per week (\$50,700 annually) on and after 12/31/17
 - \$1,125.00 per week (\$58,500 annually) on and after 12/31/18
- **Small employers** (*10 or fewer employees*)
 - \$787.50 per week (\$40,950 annually) on and after 12/31/16
 - \$900.00 per week (\$46,800 annually) on and after 12/31/17
 - \$1,012.50 per week (\$52,650 annually) on and after 12/31/18
 - \$1,125.00 per week (\$58,500 annually) on and after 12/31/19

2. Employers in Nassau, Suffolk, and Westchester Counties

- \$750.00 per week (\$39,000 annually) on and after 12/31/16
- \$825.00 per week (\$42,900 annually) on and after 12/31/17
- \$900.00 per week (\$46,800 annually) on and after 12/31/18
- \$975.00 per week (\$50,700 annually) on and after 12/31/19
- \$1,050.00 per week (\$54,600 annually) on and after 12/31/20
- \$1,125.00 per week (\$58,500 annually) on and after 12/31/21

² As we have previously reported, it is unclear if the new FLSA salary thresholds for executive, administrative, and professional employees will become the law. These circumstances make it difficult for employers to plan. We will continue to monitor this situation and advise employers accordingly. Keep in mind that, depending on your location in New York State, the federal or state salary basis threshold may differ.

3. Employers Outside of New York City and Nassau, Suffolk, and Westchester Counties

- \$727.50 per week (\$37,830 annually) on and after 12/31/16
- \$780.00 per week (\$40,560 annually) on and after 12/31/17
- \$832.00 per week (\$43,264 annually) on and after 12/31/18
- \$885.00 per week (\$46,020 annually) on and after 12/31/19
- \$937.50 per week (\$48,750 annually) on and after 12/31/20

Employers should review current exempt employees and determine whether (i) the employee's salary should be increased or (ii) the employee's position should be re-classified as non-exempt. As we advised when the increase to FLSA salary thresholds were due to take effect, this is also an opportune time to ensure that exempt employees also satisfy the job duties test of an executive or administrative employee.

While there is no guidance yet on how employers should comply with the law for employees who work in different regions of the state, the NYSDOL has stated that it intends to issue a Frequently Asked Questions and other educational materials prior to the effective date of the Rules.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Lois M. Traub, Alexander Soric, Robert L. Sacks, Michael Lydakakis, Jennifer Schmalz or Jaclyn Ruocco.

cc: Joseph E. Spinnato, President
Vijay Dandapani, Chairman

This memo is provided for informational purposes only. It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.