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New York Announces Increase to Minimum Wage for Upstate Employers

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Effective Dec. 31, 2022, the minimum wage in upstate New York (i.e., every part of the state *except* New York City, Nassau, Suffolk and Westchester counties) will increase from \$13.20 to \$14.20 per hour. The New York State Department of Labor recently announced this one dollar increase – which is approximately a 7.5% increase.

The minimum wage for employees working in New York City, Nassau, Suffolk and Westchester counties remains unchanged at \$15.00 per hour. The minimum wage for fast food employees across the state also remains unchanged at \$15.00 per hour. The minimum wage for upstate New York will continue to increase on an annual basis until the statewide minimum wage rate reaches \$15.00 per hour regardless of locale. A chart summarizing the minimum wage rates throughout the state is available [here](#).

Employers should keep two important things in mind as they prepare to comply with this forthcoming minimum wage increase. First, the minimum wage increase goes into effect on Dec. 31, 2022. Therefore, non-exempt employees who work on New Year's Eve should be paid the increased minimum wage for any hours worked. Second, the applicable minimum wage rate is determined with respect to where the work is performed – not where the employer is located. Thus, an employee working in New York City must be paid at the minimum wage rate applicable to downstate even if his or her employer is headquartered in upstate where the minimum wage has not yet reached \$15.00.

An increase to the salary threshold for employees who are classified as exempt under New York's executive and administrative exemptions has not been finalized for 2023. However, proposed regulatory text issued by the Department of Labor suggests the minimum weekly salary threshold for the executive and administrative exemptions will increase from \$990 to \$1064.25 per week (inclusive of board, lodging and other allowances and facilities) in upstate New York effective Dec. 31, 2022. Historically, the exempt salary threshold has been 75 times the minimum wage rate; this proposed increase, which will likely be implemented, roughly follows

that pattern. There is no proposed increase to the salary threshold for exempt executive and administrative employees working in New York City, Nassau, Suffolk and Westchester counties, so that threshold will remain at \$1,125 per week. There is still no state salary threshold to qualify for the professional exemption, so the federal threshold of \$684.00 per week remains applicable for the professional exemption. Employees must continue to meet specified duties requirements to qualify for an exemption.

For any questions about this minimum wage increase, please contact Hannah Redmond, any attorney in Bond's labor and employment practice or the Bond attorney with whom you are regularly in contact.



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