

Upstate New York Minimum Wage to Increase December 31, 2022



December 30, 2022 | **CLIENT ALERTS**

Changes to Minimum Wage Law

The New York minimum wage rate will increase on December 31, 2022 for most of New York State. The proposed changes were included in the 2023 Minimum Wage [report](#) issued by the State's Division of Budget on September 30, 2022 and will impact non-exempt employees, including tipped service employees and tipped food service workers outside of New York City, Long Island, and Westchester County.

For upstate New York (i.e., all of New York State except for Nassau, Suffolk, and Westchester counties and New York City) the minimum wage will increase from \$13.20 to \$14.20 per hour effective December 31, 2022—an increase of \$1.00 from the current rate. The minimum wage rate for employees working in New York City and Nassau, Suffolk and Westchester counties will remain unchanged at \$15.00 per hour. The state-wide minimum wage for fast food workers will also remain unchanged at \$15.00

In addition, the threshold for tip credits, permitted allowances (for lodging, meals and utilities) and uniform maintenance pay will also rise for upstate employees effective December 31, 2022. For example, tipped service

employees will see an increase from \$11.00 cash wage/\$2.20 tip credit to \$11.85 cash wage/\$2.35 tip credit. Tipped food service workers will likewise see an increase from \$8.80 cash wage/\$4.40 tip credit to \$9.45 cash wage/\$4.75 tip credit.

An additional update to minimum wage requirements went into effect on October 1, 2022 via the establishment of a minimum wage that is \$2.00 higher than the local standard for employees qualifying as “home care aides” under Public Health Law § 3614-c. Accordingly, the minimum wage applicable to home care workers in upstate New York increased to \$15.20 on October 1, 2022 and will increase a second time to \$16.20 effective December 31, 2022.

Minimum wage and overtime requirements generally do not apply to salaried employees who fall under the executive and administrative exemptions (among other potential exemptions). An employee may qualify if they receive a salary higher than the state-imposed minimum for the exemption and satisfy certain other requirements pertaining to their job duties. The New York Department of Labor has proposed increasing the minimum salary threshold for the executive and administrative exemption for employees working in upstate New York to \$1,064.25 (an increase from the 2022 rate of \$990). Unlike federal law, New York has no minimum salary for exemption of professional employees—so the federal minimum weekly salary of \$684 continues to apply.

New York State has plans to increase the minimum wage rate every year until a statewide standard of \$15.00 is achieved. The rate of annual increases is determined by the Director of the Division of Budget and is dependent on economic indices, including the Consumer Price Index.

Required Postings

New York employers are required to post notices of current minimum wage standards in plain view. The Department of Labor provides individualized industry-specific notices on its website. Most employers will fall under the “Miscellaneous Industry” category.

If you have any questions about the changes to minimum wage, please contact Amy Habib Rittling (716.853.5100 x1276), Andrew Drilling (716.853.5100 x1253), or any other member of our Employment Practice team.

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