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Rest Breaks and Minimum Wage Laws

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Working to create economic growth, good jobs and strong communities across New York State.



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Wage and Hours Law...the basics

- Employee vs. Independent Contractor
- NYS Commercial Goods Transportation Industry Fair Play Act
 - Free from the control and direction in performing the job, both under contract and in fact
 - Performing services outside of the usual course of business for the employer
 - Engaged in an independently-established trade, occupation or business that is similar to the service they perform

Wage and Hours Law...the basics

- No Single Factor – The “Common Law Test”
 - Is the worker subject to the control and supervision of the employer in performing the job?
 - Is the work performed part of the usual work of the employer’s business?
 - Does the worker have an independently established business offering similar services to the public?
- NYS Department of Labor’s “17 Questions”



Independent Contractors

1. Provided a copy of any contracts, or substance of oral agreement
2. Describe the services performed
3. Are these individuals in an independently established business?
4. Can similar services be performed for others in a competitive business?
5. Can work assignments be refused?
6. Is there a requirement to devote a specific amount of time to the services performed?
7. Are they covered under your insurances?
8. Are deductions made?
9. Who provides tools or supplies, materials or equipment?
10. When services are not performed (illness), who furnishes a replacement?
11. Who sets the rate of pay and what is the basis of compensation?
12. How are services obtained?
13. Where are services performed?
14. Is there a requirement to report at established times?
15. Do you supervise or review their work?
16. Do you provide reimbursement of expenses? Fringe benefits?
17. Do you provide training or require attendance at training sessions?



Exempt Salary Levels

- Exempt Employees
 - Duties Test
 - Salary Basis Test
 - Salary Level Test
- Federal Salary Level
 - \$455/ per week - Executive, Administrative, Professional, Computer, Outside Sales
- NYS Minimum Salary Level
 - Executive
 - Administrative



NYS Exempt Salary Levels

Executive and Administrative

Date	Upstate Employers	Large NYC Employers	Small NYC Employers	Nassau, Suffolk, Westchester
12/31/16	\$727.50	\$825	\$787.50	\$750
12/31/17	\$780 \$40,560	\$975 \$50,700	\$900 \$46,800	\$825 \$42,900
12/31/18	\$832	\$1,125	\$1,012.50	\$900
12/31/19	\$885	\$1,125	\$1,125	\$975
12/31/20	\$937	\$1,125	\$1,125	\$1,050
12/31/21	\$937	\$1,125	\$1,125	\$1,125

The “Overtime Rule”

- The proposed minimum salary threshold would be raised from \$455 (\$23,660 annualized) to \$679 per week (\$35,308 annualized).
- The additional total annual compensation requirement for the highly compensated employee exemption has a proposed entry level of \$147,414 per year (an increase from the current level of \$100,000).
- No changes were proposed to the duties tests for the exemptions.
- No “automatic” updates were proposed.

NYS Exempt Salary Levels Executive and Administrative

Date	Upstate Employers	Nassau, Suffolk, Westchester	Small NYC Employers	Large NYC Employers
12/31/16	\$727.50	\$750	\$787.50	\$825
12/31/17	\$780 \$40,560	\$825 \$42,900	\$900 \$46,800	\$975 \$50,700
12/31/18	\$832 \$43,264	\$900 \$46,800	\$1,012.50 \$52,650	\$1,125 \$58,500
12/31/19	\$885	\$975	\$1,125	\$1,125
12/31/20	\$937	\$1,050	\$1,125	\$1,125
12/31/21	\$937	\$1,125	\$1,125	\$1,125

Minimum Wage Increase

Minimum Wage Rate Schedule						
Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021
NYC-Large Employers (11 or more)	\$11.00	\$13.00	\$15.00			
NYC-Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of the NY State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	*

FMCSA Hours of Service

- 10 hours off-duty
- 14 hour duty period
- 11 hour driving
- 30 minute break
- 60 hour/7-day on-duty limit
- 70 hour/8-day on duty limit

NYS Meal and Rest Periods

- Labor Law Section 162 – All private and public employers and their employees who work in NYS.
- Meal Periods
 - **Factory Workers** are entitled to a 60-minute lunch break between 11:00 a.m. and 2:00 p.m. and a 60-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m. and lasting more than six hours.
 - **Non-Factory Workers** are entitled to a 30-minute lunch break between 11:00 a.m. and 2:00 p.m. for shifts six hours or longer that extend over that period and a 45-minute meal break at the time midway between the beginning and end of the shift for all shifts of more than six hours starting between 1:00 p.m. and 6:00 a.m.



Meal and Rest Periods

- All Workers are entitled to an additional 20-minute meal break between 5:00 p.m. and 7:00 p.m. for workdays that extend from before 11:00 a.m. to after 7:00 p.m.
- Not required to be counted as “hours worked” and not required to be paid for that time.
- Employee may not waive right to take a meal break.
- Remain at workstation
- Shorter meal breaks
- Additional breaks
- Exchange lunch for leaving early



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