

# EMPLOYMENT ALERT

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## New Year and New Obligations: What Employers Need to Know about 2019

By: Kimberly B. Malerba Esq. and Nicole E. Della Ragione Esq.

The New Year will ring in new obligations for companies when it comes to employees. New York employers need to be mindful of the increase in minimum wage, overtime thresholds, paid family leave benefits, and new rules regarding accommodations in the workplace. Employers should review their policies, procedures and employee wages to ensure they are in compliance with the new requirements.

### ***Overtime Threshold***

The federal Fair Labor Standards Act and New York State law requires employers to pay “non-exempt” employees overtime for all hours worked over 40 hours in a workweek. However, if an employee is “exempt” then employers are not required to pay them overtime. An employee can be exempt if they fall under an exemption classification under federal and state law. Important factors in deciding whether employees are exempt involve a review of their job duties and the amount and way in which they are paid. Most of the white collar exemptions require, in addition to satisfaction of the duties requirements, that an employee is paid a salary that meets the minimum threshold.

Effective on December 31, 2018, the overtime threshold is increasing for New York employees who are exempt under administrative and executive exemptions. The new overtime thresholds are outlined below:

NYC Large Employers (11 employees or more) - \$1,250.00 per week  
NYC Small Employers (10 employees or less) - \$1,012.50 per week  
Employers in Nassau, Suffolk and Westchester - \$900.00 per week  
Employers in all other NYS Counties - \$832.00 per week

In light of this increase, employers should evaluate the salaries being paid to administrative and executive exempt employees. If an exempt employee is being paid below the minimum threshold, their salary should be increased to meet the minimum amount, or the employee should be treated as a non-exempt employee and be paid overtime.

### ***Minimum Wage***

In addition to reviewing their exemption classifications, employers should also review the wages that they are paying to non-exempt employees. Effective as of December 31, 2018, the minimum wage in New York will increase as follows (excluding fast food workers):

NYC Large Employers (11 employees or more) - \$15.00 per hour  
NYC Small Employers (10 employees or less) - \$13.50 per hour  
Employers in Nassau, Suffolk and Westchester - \$12.00 per hour  
Employers in all other NYS Counties - \$11.10 per hour

Fast Food Workers:

New York City - \$15.00 per hour  
Outside New York City - \$12.75 per hour

Employers must assess the wages they are paying to non-exempt employees and raise wages if necessary to meet the new minimum wage requirements.

## ***Paid Family Leave***

Paid Family Leave is entering its second year in New York, and with that comes an increase in benefits. Starting on January 1, 2019, the number of weeks that eligible employees can take to bond with a new child, care for a sick family member, or to assist with family members when another family member is deployed on active military service will increase to 10 weeks (up from 8 weeks in 2018). In addition to increasing the number of weeks that can be taken, the wage replacement benefit is also increasing. Employees taking Paid Family Leave will receive 55% of their average weekly wage, up to a cap of 55% of the current Statewide Average Weekly Wage of \$1,357.11. The maximum weekly benefit for 2019 is \$746.41.

## ***New York City Reasonable Accommodation Requirements***

New York City employers may be unaware of requirements that took effect October 15, 2018 that requires a “cooperative dialogue” for workplace accommodations. These new requirements exceed those to which employees are entitled under the Americans with Disabilities Act. A cooperative dialogue is a written or oral communication that discusses the employee’s accommodation needs, the potential accommodations that may address those needs and any difficulties the potential accommodations may pose for the employer. After having a cooperative dialogue with an employee, the employer must provide the employee with a written final determination identifying any accommodation granted or denied. The types of accommodations that are subject to this new requirement are religious accommodations, disability accommodations, accommodations related to pregnancy, childbirth and related medical conditions, and accommodations for victims of domestic violence, sex offenses, or stalking.

Non-compliance with this new law is considered an unlawful discriminatory practice under the New York City Human Rights Law. Remedies for violations include compensatory and punitive damages, equitable and injunctive relief, and civil penalties (up to \$125,000 per violation and up to \$250,000 for a violation that is willful, wanton or malicious) and/or attorneys’ fees in the event of a lawsuit.

## ***New York City Sexual Harassment Law Requirements***

While most employers are aware of the recently enacted New York State sexual harassment law, employers in New York City need to be aware of additional requirements going into effect in 2019. In addition to the posters and fact sheets employers should have already posted and distributed to new hires, effective April 2019, employers with more than 15 employees will be required to conduct annual sexual harassment trainings that may require information not currently required under the New York State law. Among other things, affected employers will also have to conduct annual training for independent contractors who have performed work in the furtherance of the business for more than 90 days and more than 80 hours in a calendar year. New employees must be provided with training within 90 days of their initial hire. Employers are also required to keep a record of all training documents, including signed employee acknowledgments, for a period of 3 years.

With 2019 fast approaching, it is essential that all companies review and revise their policies and procedures. Please feel free to contact us with questions regarding any of these issues, or if we can assist with any employment-related issues.

**For more information please contact:**

Kimberly B. Malerba, Esq.  
(516) 663-6679  
kmalerba@rmfpc.com

Nicole E. Della Ragione, Esq.  
(516) 663-6687  
ndellaragione@rmfpc.com