

STOREfronts

Special



Guidance for Members of the New York Association of Convenience Stores

Next Wave of NYS Minimum Wage Increases Take Effect December 31, 2017

The general occupation minimum wage, fast food minimum wage, and minimum weekly salary will increase again in each region of New York State starting December 31st.

Background

Another round of minimum wage increases takes effect December 31, 2017, here in New York.

The general occupation minimum wage is rising \$1.50 to \$2.00 per hour in New York City; \$1.00 in Nassau, Suffolk and Westchester counties; and 70 cents in the rest of the state.

New York's fast food minimum wage, which hasn't gone away despite assurances it would, also is going up, along with the minimum weekly salary.

These mandates will further drive up labor costs in New York convenience stores and force retailers into more tough choices on staffing, benefits, pricing, and store operations.

In 2016, Governor Cuomo and the state Legislature approved multi-step increases in the state minimum wage, designed to eventually reach \$15 an hour.

The plan divided the state into three regions and set forth a different schedule of increases for each. The chart at right shows the current rates, the new rates taking effect December 31st of this year, and future rates.

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New York State General Occupation Minimum Wage, Fast Food Minimum Wage, and Minimum Weekly Salary Rates						
NEW YORK CITY - 10 Employees or Fewer						
	Current	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2020
Minimum Wage	\$10.50	\$12.00	\$13.50	\$15.00	\$15.00	\$15.00
Fast Food Min Wage	\$12.00	\$13.50	\$15.00	\$15.00	\$15.00	\$15.00
Differential	\$1.50	\$1.50	\$1.50	\$0.00	\$0.00	\$0.00
Minimum Weekly Salary	\$787.50	\$900.00	\$1,012.50	\$1,125.00	\$1,012.50	\$1,012.50
NEW YORK CITY - 11 Employees or More						
	Current	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Minimum Wage	\$11.00	\$13.00	\$15.00	\$15.00	\$15.00	\$15.00
Fast Food Min Wage	\$12.00	\$13.50	\$15.00	\$15.00	\$15.00	\$15.00
Differential	\$1.00	\$0.50	\$0.00	\$0.00	\$0.00	\$0.00
Minimum Weekly Salary	\$825.00	\$975.00	\$1,125.00	\$1,125.00	\$1,012.50	\$1,012.50
NASSAU, SUFFOLK and WESTCHESTER COUNTIES						
	Current	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Minimum Wage	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Fast Food Min Wage	\$10.75	\$11.75	\$12.75	\$13.75	\$14.50	\$15.00
Differential	\$0.75	\$0.75	\$0.75	\$0.75	\$0.50	\$0.00
Minimum Weekly Salary	\$750.00	\$825.00	\$900.00	\$975.00	\$1,050.00	\$1,125.00
UPSTATE -- ALL OTHER COUNTIES						
	Current	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
Minimum Wage	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	Indexed to Inflation
Fast Food Min Wage	\$10.75	\$11.75	\$12.75	\$13.75	\$14.50	\$15.00
Differential	\$1.05	\$1.35	\$1.65	\$1.95	\$2.00	
Minimum Weekly Salary	\$727.50	\$780.00	\$832.00	\$885.00	\$937.50	TBD

Fast Food Minimum Wage

Generally, most convenience stores are exempt from the higher fast food minimum wage. However, chain food service franchises (i.e. Subway, Dunkin Donuts, Tim Hortons) inside convenience stores are captured. Even if you only operate one store, and it contains a Subway, that Subway is subject to the Fast Food Minimum Wage because Subway has 30 or more locations nationally.

The presence of a Subway or other QSR, whether operated by the store itself or by a tenant under a lease, does not require you to pay employees who work elsewhere in your store the Fast Food Minimum Wage.

If a convenience store operates a chain food service franchise itself, and switches employees back and forth between the store side (non-fast-food) and the Subway side (fast-food), it is required to pay the employee the higher Fast Food Minimum Wage when they are working on the food side.

However, in the past the state Labor Department has held that if an employee works any part of their shift in a higher-paying job, they must be paid that higher rate for the entire shift.

Accordingly, stores should consider assigning certain employees to the food service franchise exclusively if operationally feasible, or else assume that whenever an employee is assigned to the food service franchise for any part of a shift, he/she will be paid the higher Fast Food Wage for the entire shift. Some retailers have reluctantly opted to just pay everyone in the store the Fast Food Wage rate.

The Legislature empowered the state Commissioner of Labor to “smooth” (equalize) the fast food and general minimum wage rates as long as nobody’s wages are reduced. NYACS has asked the Commissioner to exercise that authority, but to no avail.

This is hurting the convenience store industry, because we compete in the same labor pool as McDonald's and

other fast-food restaurants that are required to pay the higher fast-food minimum wage.

Consequently, the fast-food minimum wage has become the *de facto* minimum wage level from a practical standpoint even if you are not legally required to pay the fast-food minimum wage.

Minimum Weekly Salary

Under state labor law, the minimum weekly salary goes up proportionate to the increase in minimum wage.

State law says that in order to pay someone a salary rather than an hourly wage -- say, a store manager -- it must be a person:

- Whose primary duty consists of the management of the enterprise in which such individual is employed or of a customarily recognized department or subdivision thereof; *and*
- Who customarily and regularly directs the work of two or more other employees therein; *and*
- Who has the authority to hire or fire

other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; *and*

- Who customarily and regularly exercises discretionary powers; *and*
- Who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities, of not less than the minimum salary set by the state.

If the person meets all these criteria, you can elect to pay him or her a salary rather than an hourly wage with overtime pay.

Minimum Wage Poster

Employers will be required to display a poster in the workplace reflecting the new wage rates.

A sample poster will be available on the Labor Department web site for download, but in previous years they have waited until a day or two before the effective date to post it.

Online Resources

NYS Department of Labor Minimum Wage Information:
www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm

NYS DOL Wage Order Summary, 2016-2021:
www.labor.ny.gov/formsdocs/wp/Part142.pdf

Full Text of NYSDOL Minimum Wage Order:
www.labor.ny.gov/formsdocs/wp/CR142.pdf

Sample Minimum Wage Poster (2016-2017):
<https://www.labor.ny.gov/formsdocs/wp/LS207.pdf>

Questions?

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