

## **Legislative Blast December 2017\***

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### **NEW YORK WAGE INCREASES BECOME EFFECTIVE ON DECEMBER 31, 2017**

#### **Salary Minimums for Exempt Employees in New York State:**

The minimum salary required for employees falling within the executive and administrative exemptions increases to \$780.00 per week Upstate, with higher minimums Downstate. The professional exemption remains at \$455.00 per week across all of New York State.

#### **Statewide Minimum Wage and “Fast Food” Worker Minimum Wages:**

The statewide minimum wage increases to a new sliding scale starting at \$10.40 per hour Upstate and ending at \$13.00 per hour for large employers in New York City. For “fast food” workers, the minimum wage is \$11.75 per hour outside New York City and \$13.50 in New York City.

### **NEW YORK STATE PAID FAMILY LEAVE BEGINS ON JANUARY 1, 2018**

Information on the Paid Family Leave Law can be found in MVSHRM’s August and November 2017 Legislative Blasts, and the State’s Paid Family Leave website at <https://www.ny.gov/new-york-state-paid-family-leave/new-york-state-paid-family-leave-employers>.

### **NEW YORK STATE DEPARTMENT OF LABOR ISSUES PROPOSED RULEMAKING CONCERNING EMPLOYEE “CALL-IN/ON-CALL/JUST-IN-TIME” SCHEDULING**

In November 2017, the New York State Department of Labor issued a proposed rule (“Rule”) concerning employee scheduling, referred to as “call-in,” “on call,” or “just-in-time” scheduling. The Rule can be found at: <https://labor.ny.gov/workerprotection/laborstandards/pdfs/employee-scheduling-proposed-rule.pdf>. The DOL’s comment period on this Proposed Rule ends in early January. To submit a comment on this Proposed Rule, please email [hearing@labor.ny.gov](mailto:hearing@labor.ny.gov). The DOL’s Frequently Asked Questions on this Proposed Rule are as follows:

#### **What is the subject of the proposed rulemaking for call-in pay?**

The proposed rulemaking for call-in pay concerns employee scheduling practices, including just in time scheduling and on-call scheduling, which are common practices that allow employers to cancel or schedule shifts hours before or after the start of a shift.

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### **Which industries and occupations does the proposed rulemaking apply to?**

It applies to all industries and occupations that are covered by the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR [Part 142](#)). That wage order covers all industries and occupations that are not exempt from the minimum wage law, and that are not covered by separate minimum wage orders for hospitality (12 NYCRR [Part 146](#)), building service (12 NYCRR [Part 141](#)), and agriculture (12 NYCRR [Part 190](#)). See [Proposed Rule](#) at opening paragraph.

### **Doesn't call-in pay already exist under current law?**

Yes, current law already requires four hours of call-in pay at the minimum wage when an employee reports to work and is sent home early (“reporting to work”). 12 NYCRR [Part 142](#) at § 142-2.3.

### **What are the new requirements?**

Under the proposed rule, call-in pay is also required when shifts are cancelled or scheduled at the last minute. See [Proposed Rule](#) at (a)(1) (“reporting to work”) and (a)(2)-(5) (“new requirements”). Specifically, four hours of call-in pay is required when a shift is cancelled less than 72 hours before the start of the shift (“cancelled shift”), when the employee is required to be in contact less than 72 hours before the shift to find out whether to report to work for that shift (“call for schedule”), and when the employee is required to be available to report to work (“on-call”). Two additional hours of call-in pay is required when a shift is scheduled less than 14 days before the start of the shift (“unscheduled shift”). See [Proposed Rule](#) at (a)(2)-(5) (“new requirements”).

### **What are some examples of call-in pay under existing law and under the proposed rulemaking?**

The following examples reflect common employee scheduling practices and illustrate the types and amounts of call-in pay that would generally be required under the proposed rulemaking, absent any special exemptions or circumstances. See [Proposed Rule](#) at (a)(1)-(5) and (b)(1)-(4):

- **Reporting to work:** If an employee is sent home early after working only 1 hour, then 4 hours of call-in pay would be required, with the first hour of actual attendance at the employee’s regular rate of pay and 3 additional hours at the minimum wage;
- **Unscheduled shift:** If an employee works a shift that was not scheduled 14 days in advance, then the 2 hours of call-in pay would be required at the minimum wage, in addition to any wages earned during the shift;
- **Cancelled shift:** If an employee’s shift is cancelled less than 72 hours before the shift then 4 hours of call-in pay would be required at the minimum wage;
- **On-call:** If an employee is on call, but doesn’t end up working then 4 hours of call-in pay would be required at minimum wage; and
- **Call for schedule:** If an employee is asked to call in to see if they have to work less than 72 hours before a shift then 4 hours of call-in pay would be required at minimum wage.

### **Do the new requirements for call-in pay (see above) apply to full-time and highly compensated employees?**

No, the new requirements would not apply to full-time employees whose weekly pay exceeds 40 times the minimum wage. For example, if the minimum wage is \$10 per hour, workers whose

weekly wage exceeds \$400 would not be covered by the new requirements. When the minimum wage reaches \$15, the weekly threshold would increase to \$600 per week. See [Proposed Rule](#) at (c)(2).

**Does the proposed rulemaking apply to workers who are covered by a collective bargaining agreement?**

If a valid collective bargaining agreement expressly covers call-in pay, the proposed rulemaking would not apply to workers who are covered by that agreement. See [Proposed Rule](#) at (c)(1).

**Does the proposed rulemaking prohibit scheduling practices that are currently allowed?**

No. The proposed rulemaking simply requires advance notice or additional pay. Thus, for example, if there are occasions when an employer must use an on-call schedule, the proposed rulemaking would not make that practice unlawful, but rather it would require that the employer pay additional call-in pay to the employee. See [Proposed Rule](#) at (a).

**What happens if an employee calls in sick or quits and the employer needs a substitute at the last minute?**

No extra call-in pay is required if a regularly scheduled employee volunteers to cover for another regularly scheduled employee. See [Proposed Rule](#) at (c)(3).

**What is a “regularly scheduled employee”?**

A “regularly scheduled employee” is an employee who is scheduled at least 14 days in advance for shifts consistent with a written good faith estimate of hours. A good faith estimate of hours can be provided at the time of hiring and amended at the employee’s request. The rulemaking does not require that estimate, but an estimate is required for the exception (above) for a regularly scheduled employee who volunteers to cover another regularly scheduled employee. If an employer does not provide such estimate to an employee, then that employee will not be considered to be regularly scheduled, and would have to be paid the additional two hours of pay if they are required, or volunteer, to cover shifts with less than 14 days’ notice. See [Proposed Rule](#) at (c)(3).

**What does “volunteers to cover” mean?**

An employee “volunteers to cover” when a regularly scheduled employee accepts a request from another regularly scheduled employee or from an open request from the employer that is extended to all eligible employees. See [Proposed Rule](#) at (c)(3).

**What about new hires, does the employer need to pay call-in pay for the first two weeks or wait two weeks in order to comply with the rulemaking?**

No, the call-in pay for unscheduled shifts does not apply during the first two weeks of employment. An employer does not need to wait two weeks and does not have to pay additional call-in pay for unscheduled shifts during those first two weeks. See [Proposed Rule](#) at (c)(3).

**How about new shifts, does the employer need to pay call-in pay for the first two weeks or wait two weeks in order to comply with the rulemaking?**

No, the call-in pay for unscheduled shifts does not apply during the first two weeks of a new shift. See [Proposed Rule](#) at (c)(3).