

# Changes to Exempt Employee Law and Massachusetts Minimum Wage: What Employers Need to Know for 2020

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As all employers know, employees fall into one of two distinct categories: nonexempt hourly paid, and exempt salaried. The distinction between these two classifications is that nonexempt employees must be paid overtime for all hours worked beyond forty in a workweek, while exempt employees do not receive overtime regardless of how many hours they work. Exempt employees receive the same weekly salary each week, irrespective of the number of hours they work that week.

## “SALARY BASIS” MINIMUM IS INCREASING

To be classified as an exempt employee, one must both satisfy a job “duties” test and pass a “salary basis” threshold under the federal Fair Labor Standard Act (FLSA). While there has been no change regarding what duties make one eligible to be exempt and paid a salary, effective January 1, 2020, the minimum weekly salary an employee must receive if he or she is to remain or become exempt will increase from the current minimum of \$455 per week to \$684 per week -- the annual salary equivalent of \$35,568. This new law has no impact whatsoever on hourly paid employees nor does it have any material impact on an exempt employee whose weekly pay rate is already at \$684 or higher per week.

Given both the high cost of living in the northeastern United States and the fact that many employers raised their exempt employee salaries in 2016, following the then-anticipated much higher increase in the “salary basis test” that was to have taken effect on December 1, 2016 (but which was later rescinded before implementation at the last minute) very few exempt employees in Massachusetts are likely to be paid less than \$684 per week now. Therefore, most Massachusetts employers with exempt employees will not be affected by the new rule. However, any employer that does have exempt employees with weekly salaries less than \$684 will need to increase those salaries to \$684, effective January 1, 2020. Alternatively, an employer could choose not to increase the exempt employees’ wages and instead convert him or her to nonexempt hourly paid status by dividing the current weekly salary by, most often, forty hours, to arrive at the hourly rate

of pay. Where an employer chooses to convert a previously exempt employee to nonexempt/hourly paid, that employee must thereafter be paid time-and-a-half their hourly rate for all hours worked beyond forty in a given workweek.

Employers that employ exempt employees who are currently paid below the new minimum need to decide whether to increase the salary to meet the new minimum or to convert the employee to nonexempt/hourly paid. The answer turns on two obvious factors: (1) how far below the new minimum salary is the employee’s current salary and (2) how many hours beyond forty, if any, does the exempt employee work each week? An analysis of those two factors will help an employer make that decision.

## OTHER NOTABLE ASPECTS OF THE NEW FLSA RULE

While the most significant aspect of the new FLSA rule is the increase in the exempt employee minimum weekly salary, there are a few other aspects of the new rule worth noting. First, to help employers more easily reach the new exempt employee minimum salary threshold, the new rules allow employers to include later-paid commissions, incentive payments and nondiscretionary bonuses (as long as they are paid no less frequently than annually) to count for up to 10 percent of an exempt employee’s weekly salary. Second, the “highly compensated employee” annual minimum was increased from the current \$100,000 to \$107,432. (While beyond the scope of this article, the highly compensated employee route is an alternative means to satisfy the exempt employee duties test in certain instances.) Third, while previous rule drafts had provided automatic increases to the salary minimum every three years, the new rule contains no such provision. Therefore, there is no predetermined time when the exempt employee salary minimum will increase. (The current \$455 weekly threshold has been in effect since 2004.)

## MASSACHUSETTS MINIMUM WAGE INCREASE

One will recall that in 2018, Governor Baker signed into law what was called the “Grand Bargain.” As part of that Grand

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Bargain, the Massachusetts minimum wage will increase from the current \$12.00 of 2019 to \$12.75 on January 1, 2020. Per that 2018 legislation, the Massachusetts minimum wage will go up by an additional seventy-five cents at the start of each successive calendar year until it reaches \$15.00 on January 1, 2023.

We will keep you updated as new information becomes available. In the meantime, please feel free to contact me with any questions about best practices for your particular company or organization. **FT**



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