

THE DAILY RECORD

Tuesday, October 8, 2019 / Volume III / Number 195 / \$2.00 • Western New York's trusted source for legal and real estate news

Your COUNSEL

Wage and hour law in a nutshell

More than ever before, we who practice law limit ourselves to a finite number of areas. Notwithstanding, people come to us with many problems which fall outside our expertise.

Federal and state wage and hour laws have been in the news often in the last several years. Federal law sets the minimum standard unless state law provides greater protection to employees. In general, New York law provides greater protection to employees.

Although a little knowledge is dangerous, the goal of this column is to share practical information so that you can assist people with employment, disability benefit, workers' compensation and related problems. For those readers who (like me) went to law school, we may remember affectionately the "Law in a Nutshell" books from West Publishing.

Here are the basics that you need to know (aka "Wage and Hour Law in a Nutshell"):

1. Federal and New York laws apply. The Fair Labor Standards Act (FLSA) is a federal law that applies to employers with gross annual revenues of \$500K. The New York Labor Law applies to all employers in New York.

2. All employees must be paid at least the minimum wage for all hours worked. The minimum wage required by federal law is lower than the minimum wage required by New York law. The minimum wage in upstate New York for "non-fast food employees" is \$11.10/hour. Mini-



By **STEVEN V. MODICA**
Daily Record
Columnist

imum wage increases for these employees in the future will be: (1) on or after Dec. 31, 2019 – \$11.80/hour; and (2) on or after Dec. 31, 2020 – \$12.50/hour.

3. Some employees are entitled to overtime pay. Non-exempt employees who work

more than 40 hours in a given week must be paid at an overtime rate (i.e., one and one-half times their regular rate of pay) for each hour worked over 40.

4. Some employees are exempt from overtime pay. To be exempt, three criteria must be met.

5. First, an exempt employee must be paid a weekly salary of a specified amount. If the employee is paid a weekly salary less than the specified amount, they are non-exempt (and entitled to overtime pay) as a matter of law.

a. The minimum salary required by federal law, which will increase effective Jan. 1, 2020, is lower than the minimum salary required by New York law.

b. The minimum salary for two classes of exempt employees (administrative and executive) in New York is \$832/week (\$43,264/year). Minimum salary increases for these two classes of exempt employees in the future will be: (1) On or after Dec. 31, 2019 – \$885/week

(\$46,020/year); and (2) On or after Dec. 31, 2020 – \$937.50/week (\$48,750/year).

c. New York law does not require a minimum salary for professionals, one class of exempt employees. Federal law, however, sets a minimum salary for this class of exempt employees which is \$455/week (\$23,660/year). Effective January 1, 2020, the minimum salary under federal law for exempt professionals will be \$684/week (\$35,568/year).

6. Second, there must be no unlawful deductions from the salary paid to the exempt employee. In simple terms, absent five recognized circumstances, an employer cannot make any deductions from the salary paid. The regulations contemplate five circumstances under which an employer may deduct from salary: (1) absenteeism; (2) certain sick leave/Family & Medical Leave Act protected leave; (3) penalties imposed in good faith for infractions of safety rules; (4) unpaid disciplinary suspensions; and (5) certain mistaken overpayments.

7. Third, the duties performed by the exempt employee must meet one of several "duties" tests found in the FLSA. The three most common "white collar" exemptions are known as the: (a) administrative, (2) executive and (3) professional.

a. Administrative: This exemption applies if the employee's primary duty: (1) is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's custom-

ers; and (2) includes the exercise of discretion and independent judgment with respect to matters of significance.

b. Executive: This exemption applies if: (1) the employee's primary duty is managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; (2) the employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and (3) the employee must have the authority to hire or fire other employees, etc.

c. Professional: This exemption ap-

plies if: (1) the employee's primary duty is the performance of work requiring advanced knowledge; (2) the advanced knowledge must be in a field of science or learning (such as law, medicine, accounting, engineering, etc.); and (3) the advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

8. New York has a myriad of wage and hour laws. Find many of these at this link from the website of the New York State Department of Labor: <https://labor.ny.gov/workerprotection/laborstan->

[dards/workprot/lshmpg.shtm](https://labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm)

9. The United States Department of Labor (USDOL) has prepared helpful "tool kits" so that employers can more easily comply with federal wage and hour laws. Find many of these at this link of the USCOL website: <https://www.dol.gov/whd/regs/compliance/CAKits.htm>

Steven V. Modica, Esq. is the principal owner of the Modica Law Firm (www.ModicaLawFirm.com). He can be reached at 585-368-1111 or by e-mail at Steve@ModicaLawFirm.com.