

When Reclassifying Employees from Exempt to Non-Exempt, Don't Forget the Wage Theft Prevention Act Notices

Employers in New York are familiar with the requirement, imposed by the Wage Theft Prevention Act, that every new hire must be provided with notice of their rate of pay (including overtime rate of pay if applicable), how the employee will be paid (i.e., by the hour, shift, day, etc.), the regular payday, and information regarding the employer. Employers are obligated to provide an additional written notice anytime that information changes, unless the employee's wage rate is increased and the next pay stub reflects the increase. Each time notice is given, the employer is required to obtain a signed acknowledgment from the employee, and must keep that signed acknowledgment on record for six years. [Upcoming changes to the white collar exemptions](#) under the Fair Labor Standards Act may implicate a need to issue new notices if employees are reclassified from exempt to non-exempt.

As the law currently stands, employees must earn a minimum salary of \$455.00 per week (\$23,660 per year) to qualify for one of the white collar exemptions (administrative, executive, or professional) under the FLSA. New York currently has a higher salary threshold of \$675.00 per week (\$35,100 per year) for an employee to qualify for the administrative or executive exemptions. The current threshold for employees to meet the "highly compensated employee" exemption under the FLSA is \$100,000 per year.

Starting on December 1, 2016, however, these thresholds will rise substantially. The increased salary threshold for the administrative, professional, and executive exemptions will be \$913.00 per week (\$47,476 per year). The new threshold for the highly compensated employee exception will be \$134,004 per year. These thresholds are set to increase every three years after that, with the first increase taking effect on January 1, 2020.

This change will force many employers to reclassify employees who are currently exempt, but do not meet the new salary threshold, as non-exempt. Any such reclassification will affect the rates those employees are paid, how they are paid, and their eligibility for overtime pay. Given this impact, what legal obligation will the reclassification trigger? You guessed it — the WTPA's notice requirement.

Accordingly, employers should be mindful of this notice requirement when reclassifying employees in order to comply with the updated regulations, or when making any other changes to employee's rates or method of payment. Although the "pay stub exemption" may apply in some limited instances, the best practice is to provide employees with formal written notice that complies with the WTPA when making any such changes.

If you have any questions about this Information Memo, please contact [Christopher J. Stevens](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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