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TO: LeadingAge

FROM: Hinman Straub P.C.

RE: **NYS Executive, Administrative and Professional Overtime Exemption
Changes Effective December 31, 2016**

DATE: December 29, 2016

NATURE OF THIS INFORMATION: This is information explaining new requirements you need to be aware of or implement.

DATE FOR RESPONSE OR IMPLEMENTATION: The Final Rule goes into effect on December 31, 2016.

HINMAN STRAUB CONTACT PEOPLE: Ben Wilkinson, Joseph Dougherty and Sean Doolan

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
Category: #4 Regulatory Process Suggested Key Word(s):

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On December 28, 2016, the New York State Department of Labor posted its [Notice of Final Adoption](#) (pg. 29) that increases the income thresholds that allow employers to classify employees as “exempt” from paying overtime (“Final Rule”). The adopted changes to New York’s regulations on overtime were originally proposed on October 19, 2016, were adopted without amendment, and are effective December 31, 2016.

The Final Rule comes on the heels of the highly publicized changes to the regulations governing the application of the “White Collar” exemptions under the Fair Labor Standards Act (“FLSA”) on the Federal level which were scheduled to take effect of December 1, 2016, but have been stayed nationwide pursuant to a November 22, 2016 Decision and Order of the District Court for the Eastern District of Texas granting a preliminary injunction.

Presently, New York regulations require that executive and administrative employees must earn a minimum weekly income of \$675 to be exempt. As set forth below, the Final Rule imposes a series of annual increases to the weekly income threshold depending on the location of the employer within New York State.

As stated above, the Final Rule goes into effect on December 31, 2016.

NEW YORK OVERTIME EXEMPTION CHANGES

As summarized above, New York regulations exclude certain executive, administrative, and professional employees from minimum wage and overtime requirements which are commonly referred to as the “EAP” exemptions. Currently, to qualify for one of these exemptions, employees must: (1) be salaried; (2) be paid more than the EAP threshold, currently \$675 per week or \$35,100 annually; and (3) work in an executive or administrative capacity in their employment. It should be noted that New York does not require any minimum weekly amount for the professional employee exemption. See 12 NYCRR § 142-2.14(c)(4)(iii).

The Final Rule increases the overtime exemption income threshold for the executive and administrative exemptions by location, similar to the recently enacted NYS Minimum Wage Changes, of an employer as follows:

New York State

Effective Date	Minimum Salary
Dec. 31, 2016	\$727.50 per week
Dec. 31, 2017	\$780.00 per week
Dec. 31, 2018	\$832.00 per week
Dec. 31, 2019	\$885.00 per week
Dec. 31, 2020	\$937.50 per week

New York City

Effective Date	Minimum Salary (11 or more employees)	Minimum Salary (10 or fewer employees)
Dec. 31, 2016	\$825.00 per week	\$787.50 per week
Dec. 31, 2017	\$975.00 per week	\$900.00 per week
Dec. 31, 2018	\$1125.00 per week	\$1012.50 per week
Dec. 31, 2019	\$1125.00 per week	\$1125.00 per week

Nassau, Suffolk and Westchester Counties

Effective Date	Minimum Salary
Dec. 31, 2016	\$750.00 per week
Dec. 31, 2017	\$825.00 per week
Dec. 31, 2018	\$900.00 per week
Dec. 31, 2019	\$975.00 per week
Dec. 31, 2020	\$1050.00 per week
Dec. 31, 2021	\$1125.00 per week

The Final Rule applies to employers in the building service industry, nonprofit industry, hospitality industry and all other miscellaneous for-profit businesses. Essentially, with Federal changes on hold, the Final Rule significantly increases the overtime exemption threshold for New York State employers over the next few years.