



Coronavirus:
Update and Discussion on Continuing Legal
and Practical Issues Related to COVID-19

 **BOND** SCHOENECK
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Introduction



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NY PSL – The Latest Updates



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New York Wage and Hour – New Minimum Wage and Salaried Exemption Thresholds



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Minimum Wage Increases Effective 12/31/20

- Employees other than fast food employees:
 - \$12.50 per hour outside of New York City, Nassau, Suffolk, and Westchester counties (\$0.70 per hour increase)
 - \$14.00 per hour in Nassau, Suffolk, and Westchester counties (\$1.00 per hour increase)
 - \$15.00 per hour in New York City (no change)
- Fast food employees:
 - \$14.50 per hour outside of New York City (\$0.75 per hour increase)
 - \$15.00 per hour in New York City (no change)



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Elimination of Tip Credit Effective 12/31/20

- Estimated to impact approximately 70,000 employees covered by the Miscellaneous Industries Wage Order, such as
 - Car wash attendants
 - Nail and hair salon workers
 - Dog groomers
 - Valet parking attendants
- The tip credit for food service workers and other tipped service employees at hotels and restaurants has not been eliminated



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Hospitality Industry Maximum Tip Credits Effective 12/31/20

- Food service workers
 - \$5.00 per hour in New York City (no change)
 - \$4.65 per hour in Nassau, Suffolk, and Westchester counties (\$0.30 per hour increase)
 - \$4.15 per hour in the rest of New York State (\$0.20 per hour increase)
- Service employees
 - \$2.50 per hour in New York City (no change)
 - \$2.35 per hour in Nassau, Suffolk, and Westchester counties (\$0.20 per hour increase)
 - \$2.10 per hour in the rest of New York State (\$0.15 per hour increase)



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Increases to Salary Levels for the Executive and Administrative Exemptions Effective 12/31/20

- \$937.50 per week for employers outside of New York City, Nassau, Suffolk, and Westchester counties (increase of \$52.50 per week)
- \$1,050.00 per week for employers in Nassau, Suffolk, and Westchester counties (increase of \$75.00 per week)
- \$1,125.00 per week for employers in New York City (no change)
- New York minimum salary levels are inclusive of board, lodging, or other allowances and facilities



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Salary Requirements for the Professional Exemption

- No New York salary threshold for the professional exemption
- Federal threshold for executive, administrative, and professional exemptions is \$684.00 per week, exclusive of board, lodging, or other facilities
- No federal salary level requirements for
 - Teachers
 - Doctors
 - Lawyers
 - Medical Interns and Residents



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Duties Requirements for Exemptions

- Administrative:
 - Office or non-manual work
 - Directly related to management or general business operations
 - Exercise of discretion and independent judgment with respect to matters of significance
- Executive:
 - Management of the enterprise or a department/subdivision
 - Directs the work of two or more employees
 - Has the authority to hire/fire or make meaningful recommendations about hiring, firing, advancement, promotion



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Duties Requirements for Exemptions (cont.)

- **Learned Professional:**
 - Performs work requiring advanced knowledge in a field of science or learning that is customarily acquired by a prolonged course of specialized intellectual instruction
- **Creative Professional:**
 - Performs work requiring invention, imagination, originality, or talent in a field of artistic or creative endeavor



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Recurring Pandemic Employment Issues – Some Things to Keep in Mind



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Recurring Pandemic-related Employment Issues

- Employee Exposure & Workplace Precautions
- Holiday Travel
- Remote Work
 - Maintaining flexibility, fairness, responsiveness, and accountability
- Unemployment Insurance Eligibility
- Social Media Activity
- *Don't forget the (non-COVID) details!*



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Update from Albany



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December 14, 2020

- **BIG DAY IN ALBANY.**
 - Vaccine
 - 10,000 doses distributed in NY yesterday
 - 170,000 from Pfizer, 346,000 from Moderna
 - Electoral College



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Executive Order 202.82

- Extensive order regarding vaccine distribution.
- Expands who may give the COVID-19 vaccine, including dental hygienists, podiatrists, and midwives.
- Expands where vaccine may be given.



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Executive Order 202.81

- Extends the commercial eviction moratorium until January 31, 2021.
- Allows hospitals to discharge patients who have not obtained a negative COVID-19 test, so long as the patient is beyond the infectious period (as measured by the CDC), only to a COVID-19 positive only facility is such facility first certifies that it can properly care for such patient.
- Indoor dining in NYC – closed.



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New Metrics for Cluster Zones

- Red zone: implemented when **a region** (AFTER cancellation of elective procedures + 50% increase in hospital capacity) is 21 days away from reaching 90% hospital capacity on the current 7-day growth rate.
 - No zones qualify.
- Orange Zone: a **“geographic area”** has (1) 4% positivity rate (7-day average) over past 10 days and has reached 85% hospital capacity OR (2) DOH determines rate of hospital admissions is “unacceptably high”



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New Metrics for Cluster Zones

- Yellow zone: a “**geographic area**” has 3% positivity rate (7-day average) over 10 days AND is in top 10% in state for hospital admissions per capita over past week AND is experiencing daily admissions growth each week.
- NEW Yellow Zones:
 - Oneida County (Utica/Rome)
 - Niagara County (expanded)
 - Genesee County (Batavia)



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Orange Zone Changes

- Gyms: gyms and fitness centers in orange zones may continue to operate beginning on Dec. 14 at 25% capacity.
- Barbers, hair salons, spas, tattoo or piercing parlors, nail technicians and nail salons, cosmetologists, estheticians, the provision of laser hair removal and electrolysis, and all other personal care services may reopen on Dec. 14, but:
 - Before reopening, all employees providing service must obtain negative COVID-19 test results within the preceding 7 days.
 - Employees providing services directly to or on customers must receive diagnostic testing for COVID-19 on a weekly duration throughout the orange zone designation.



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Relief Package on the Horizon



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