

Hike In NY Salary Threshold Lets DOL Take More Complaints

By **Jon Steingart**

Law360 (October 6, 2023, 3:01 PM EDT) -- An amendment to New York's labor law that's intended to expand the state Department of Labor's ability to field worker complaints will also entitle more people to protections regarding the frequency and method by which they're paid, attorneys told Law360.

Salary threshold is a well-known element of wage and hour law that affects whether someone is entitled to overtime when they work more than 40 hours in a week. But the salary threshold that **S. 5572/A. 6796** raises has nothing to do with overtime.

The legislation, which Democratic Gov. Kathy Hochul signed Sept. 15, raises a salary threshold that determines which workers are covered by a few sections of the state labor law's Article 6, which addresses payment of wages.

Specifically, anybody who makes less than \$1,300 per week, or \$67,600 in a year, will be protected from mandatory direct deposit and entitled to payment for benefits and wage supplements, such as vacation and holiday pay and expense reimbursements, when it takes effect March 13. Clerical and manual workers who earn below the threshold will be entitled to pay on a weekly basis.

Michael Paglialonga, who advises employers as of counsel at Littler Mendelson PC, told Law360 it's easy to mix up the salary threshold in Article 6 and the overtime threshold, which the DOL establishes in regulations authorized by Article 19.

"These definitions and rates are so similar to the overtime threshold that a lot of people just confuse them," he said. "Those do go hand in hand in a lot of areas, but the definitions are different."

Henry Shapiro, a Jackson Lewis PC principal who counsels employers, told Law360 he advises clients that they can avoid running into compliance issues by raising employees' pay above the relevant threshold. The easiest way to sink an employee's wage payment or overtime claim is by pointing out that the relevant labor law section doesn't even apply because their pay is above the threshold, he said.

The salary threshold for entitlement to overtime is \$1,125 per week, or \$58,500 per year, in downstate counties. It's \$990 per week, or \$51,480 per year, in the rest of New York.

Employers that pay workers below the new Article 6 threshold and are in a position to raise salaries should consider doing so, he said. Raising pay above \$1,300 per week is the simplest way an employer can maintain its wage payment practices as they are now and avoid taking on new compliance requirements, he said.

"To the extent you have the ability to increase compensation or wages, now's the time to do it," he said.

Shapiro said he thinks the portion of the legislation that's likeliest to alarm employers is the section that entitles more workers to payouts for benefits and wage supplements. That part of Article 6 has sharper teeth because failure to comply with it can carry criminal liability, he said.

Laying an easier path to compliance is only part of the reason Shapiro recommends boosting pay, he

said. New York has a new law requiring employers to **disclose salary ranges** in job announcements, and companies that advertise higher rates will have a recruiting advantage over competitors.

"The better number you can advertise, the better," he said.

The measure's sponsor in the New York State Assembly, Assemblyman Kenny Burgos, D-Bronx, wrote in a memo accompanying the legislation that raising the threshold will empower the DOL to support more workers. Burgos did not respond to Law360's request for comment.

"The Department of Labor's Labor Standards office refuses wage theft claims from executive, administrative or professional employees making more than \$900 a week, meaning these victims are left only to fend for themselves in the civil court system if they wish to be properly compensated for their labor," Burgos wrote. "DOL's inflexible approach to Article 6 enforcement stands in stark contrast to what occurs in neighboring states like New Jersey, which accepts all wage theft claims regardless of salary."

Little's Paglialonga, who had a 15-year run at the DOL that included stints as acting general counsel and deputy general counsel, said it has a policy of not accepting certain Article 6 complaints from employees whose pay is too high. Changing the threshold will open its door to more workers, he said.

"This will certainly expand DOL's authority as some of that is based on this definition," he said. "By and large, this is both a policy enforcement that aligns with that and not directly expanding DOL's authority."

The legislation's sponsor in the New York State Senate, Sen. Andrew Gounardes, D-Brooklyn, told Law360 that the update is intended to counter inflation eroding its value.

"The last time New York raised its threshold was 2007, and we raised it from \$600 to \$900," he said. "That's ages ago in the life of an economy."

Laurie Morrison, who represents employees as owner of the Law Offices of Laurie E. Morrison, told Law360 that letting workers at the lower end of the wage spectrum vindicate their rights by going to the DOL is preferable in many circumstances to requiring them to litigate claims in court. She's president of the National Employment Lawyers Association/New York, a collective of worker-side attorneys that supported the legislation.

"Court can be cost-prohibitive for a lot of people," she said. "Someone who's lower income [with] less resources, the Department of Labor would be a great fit because you're not going to be subject to those kinds of costs."

The DOL told Law360 it will use its resources to enforce the state's worker protections.

"The New York State Department of Labor is committed to ensuring that every hardworking New Yorker is paid the fair wages they deserve," it said in a statement. "Raising the threshold will enable the Division of Labor Standards to assist more New Yorkers in recovering wages they rightfully earned."

--Editing by Amy Rowe and Neil Cohen.