

New York law on gender identity, new wage requirements

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New York passes GENDA

After passage of a new law, it is now illegal to discriminate on the basis of gender identity or expression in the state of New York. On Jan. 15, 2019, the New York legislature passed the Gender Expression Non-Discrimination Act. GENDA faced more than a decade of impasse in the State Senate.

Gov. Andrew Cuomo signed GENDA into law on Jan. 25.

GENDA protects the rights of transgender and non-gender-conforming New Yorkers by adding “gender identity or expression” as a protected category under the state’s Human Rights Law.

The legislation defines “gender identity or expression” as “a person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.”

Gender identity and expression now take on the same protected status as other protected categories, such as race, sex, religion or age.

It was presumed that gender identity and gender expression were protected under the NYSHRL’s existing protections for gender and sexual orientation, but GENDA makes it explicit: Employers, labor organizations, places of public accommodation, educational institutions and housing establishments may not take adverse actions against individuals because of their gender identity or gender expression.

New York employers should update their equal employment opportunity and sexual harassment prevention policies accordingly. Ensure that annual mandatory sexual harassment training contains adequate information regarding harassment based on this newly protected category.

Educational institutions should similarly update their policies, along with admissions criteria and application processes.

Minimum wage and white-collar salary thresholds

Although the federal minimum wage rate remains \$7.25 per hour and the U.S. Department of Labor has not issued any new proposed regulations to raise the minimum salary to qualify for a white-collar exemption under federal law, employers in New York are now required to comply with the new state minimum wage rate and the new state salary threshold to qualify for the executive and administrative exemptions.

New minimum wages

These new minimums went into effect on Dec. 31, 2018:

- Employers outside New York City, Nassau, Suffolk and Westchester counties: \$11.10 per hour (increase of \$0.70 per hour)
- Employers in Nassau, Suffolk and Westchester counties: \$12 per hour (increase of \$1.00 per hour)
- Employers in New York City with 10 or fewer employees: \$13.50 per hour (increase of \$1.50 per hour)
- Employers in New York City with 11 or more employees: \$15 per hour (increase of \$2.00 per hour)

Fast-food employees are now entitled to an even higher minimum wage rate:

- Fast-food employees outside of New York City: \$12.75 per hour (increase of \$1.00 per hour)
- Fast-food employees in New York City: \$15 per hour (increase of \$1.50 per hour)

White-collar salary thresholds

The new salary thresholds to qualify for executive and administrative exemptions are as follows:

- Employers outside of New York City, Nassau, Suffolk and Westchester counties: \$832 per week (increase of \$52 per week)
- Employers in Nassau, Suffolk and Westchester counties: \$900 per week (increase of \$75 per week)
- Employers in New York City with 10 or fewer employees: \$1,012.50 per week (increase of \$112.50 per week)
- Employers in New York City with 11 or more employees: \$1,125 per week (increase of \$150 per week)

New York does not set a salary threshold to qualify for the professional exemption, so employees must meet the current federal salary threshold of \$455 per week to qualify for the professional exemption. For all the white-collar exemptions, employees must also meet the applicable duties requirements.

Online resources A chart summarizing the minimum wage rates, tip credits, uniform maintenance allowances, meal and lodging credits, and exempt salary thresholds under the Miscellaneous Industries Wage Order can be found at labor.ny.gov/formsdocs/wp/Part142.pdf.

A chart summarizing this same information under the Hospitality Industry Wage Order can be found at labor.ny.gov/formsdocs/wp/Part146.pdf.