



# Office of Children and Family Services

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## Local Commissioner Memorandum

<b>Transmittal:</b>	19-OCFS-LCM-01
<b>To:</b>	Commissioners of Social Services
<b>Issuing Division/Office:</b>	Division of Child Care Services
<b>Date:</b>	February 12, 2019
<b>Subject:</b>	<b>State Minimum Wage Increase and Its Effect Upon Child Care Assistance</b>
<b>Suggested Distribution:</b>	Director of Services Day Care Subsidy Supervisors WMS Coordinators Accounting and Child Welfare Supervisors
<b>Contact Person(s):</b>	Division of Child Care Services Merideth Bastiani at (518) 402-3001 or <a href="mailto:Merideth.Bastiani@OCFS.ny.gov">Merideth.Bastiani@OCFS.ny.gov</a>
<b>Attachments:</b>	None

### I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform local social services districts (districts) that the increase in the state minimum wage, effective December 31, 2018, may affect a family's eligibility for child care assistance.

### II. Background

Districts were informed of increases to the minimum wage on December 12, 2018, in an informational letter (INF) issued by the New York State Office of Temporary and Disability Assistance (OTDA), 18-INF-17, *2018 State Minimum Wage Increase and Its Effect on Temporary Assistance and Supplemental Nutrition Assistance Programs*.

New York Labor Law § 652 authorizes increases to the New York State minimum wage. The latest increase, which went into effect on December 31, 2018, varies by region, and by size of employer for individuals who work in New York City. The law requires that employers in New York State pay all employees who are in the state, but outside New York City and Nassau, Suffolk, and Westchester counties, at least \$11.10 per hour as of December 31, 2018. Minimum wage requirements are also specifically applicable to those employed in the following areas, pursuant to the New York Labor regulations cited below:

- Building Service Industry (except janitors in residential buildings) – 12 NYCRR Part 141.1
- Miscellaneous Industries and Occupations — 12 NYCRR Part 142.1
- Hospitality Industry – 12 NYCRR Part 146.1
- Farm Workers (if cash paid to all employees on farm during preceding calendar year aggregated \$3,000 or more) – 12 NYCRR Part 190.1

The state minimum wage rates are scheduled to increase annually on December 31<sup>st</sup> until they reach \$15.00 per hour. The scheduled increases vary by region and size of employer as shown in the chart below, which is also available on the Department of Labor's website. There are also different minimum hourly rates for workers in the fast food industry and food service workers who receive tips. Further information can be found at:

<https://www.labor.ny.gov/workerprotection/laborstandards/workprot/minwage.shtm>

<b>General Minimum Wage Rate Schedule for New York State 2018-2019</b>		
<b>Location</b>	<b>12/31/2018</b>	<b>12/31/2019</b>
New York City - Large Employers (11 employees or more)	\$15.00	\$15.00
New York City - Small Employers (10 employees or less)	\$13.50	\$15.00
Nassau, Suffolk and Westchester All Employers	\$12.00	\$13.00
Remainder of New York State All Employers	\$11.10	\$11.80

Additional information on the minimum wage rate schedule can be obtained by calling 1-888-4-NYS-DOL (1-888-469-7365) or logging onto <https://www.labor.ny.gov/home/>.

### III. Program Implications

For some families receiving child care assistance, the increase in the state minimum wage will result in additional income and will affect the number of hours an individual is required to work. 18-INF-17, issued by OTDA, covers the effects of the state minimum wage increase on families receiving temporary assistance. Therefore, this LCM does not address how the state minimum wage increase affects child care assistance for families receiving temporary assistance. This LCM addresses how the minimum wage increase affects child care assistance for low income families and families receiving child care in lieu of temporary assistance.

Title 18, section 415.3(b) of the Codes, Rules and Regulations of New York State requires that applicants for child care assistance notify the district immediately of any changes in family income and composition, child care arrangements, and any other circumstances related to the family's eligibility for child care services. When informed of a family's increase in income, the district must redetermine the family's eligibility and adjust benefits as necessary.

The increase in the state's minimum wage also affects the required minimum gross earnings of families that are in receipt of child care in lieu of temporary assistance. The chart below provides the minimum gross earnings and minimum number of work hours for single and two-parent households.

Examples follow of minimum gross earnings based on four different New York State minimum wages for different types of families applying for child care subsidy. The minimum gross earning

amounts in row 1 are calculated based on the relevant minimum wage multiplied by 17.5 hours per week. The minimum gross earning amounts in row 2 are calculated based on the relevant minimum wage multiplied by 25 hours per week. The minimum gross earning amounts for the parent who is employed and earning minimum wage or more per hour, or is self-employed and earning at least the equivalent of the minimum wage per hour for families that fall into row 5 are calculated based on the relevant minimum wage multiplied by 17.5 hours per week.

<b>Location/ Minimum Wage</b>	<b>New York City 11 Employees or more</b>	<b>New York City 10 Employees or less</b>	<b>Nassau, Suffolk and Westchester Counties</b>	<b>Remainder of New York State</b>	
	Minimum Wage \$15.00/hour	Minimum Wage \$13.50/hour	Minimum Wage \$12.00/hour	Minimum Wage \$11.10/hour	
<b>Family</b>	<b>Minimum Gross Earnings<sup>1</sup></b>				<b>Minimum Work Hours</b>
<b>Row 1</b> <b>Single-parent family</b> where parent is employed and earning minimum wage or more per hour, or is self- employed and earning at least the equivalent of the minimum wage per hour	\$262.50/week or \$1137.50 per month	\$236.50/week or \$1023.50 per month	\$210.00/week or \$910.00 per month	\$194.50/week or \$841.50 per month	N/A
<b>Row 2</b> <b>Two-parent family</b> where both parents are employed and earning minimum wage or more per hour, <u>or</u> are self-employed and earning at least the equivalent of the minimum wage per hour	\$375.00/week or \$1625.00 per month combined	\$337.50/week or \$1462.50 per month combined	\$300.00/week or \$1300.00 per month combined	\$277.50/week or \$1202.50 per month combined	N/A
<b>Row 3</b> <b>Single-parent family</b> where parent is employed in a job exempt from minimum wage rules and earning less than minimum wage per hour	N/A	N/A	N/A	N/A	17.5 hours per week
<b>Row 4</b> <b>Two-parent family</b> where both parents are employed in a job exempt from minimum wage rules and earning less than minimum wage per hour	N/A	N/A	N/A	N/A	25 hours per week combined

<sup>1</sup>Use the following procedure to manually calculate minimum gross earnings: Per week: wage x hours worked. Per month: wage x hours worked x 4.333. Rounding: .01 to .24 round down to 0, .25 to .50 round up to .50, .51 to .74 round down to .50, .75-.99 round up to the next .00.

<p><b>Row 5</b>  <b>Two-parent family</b> where one parent is employed and earning minimum wage or more per hour, <u>or</u> is self-employed and earning at least the equivalent of the minimum wage per hour;  <b>and</b>  one parent is employed in a job exempt from minimum wage rules and earning less than minimum wage per hour.</p>	<p>\$262.50/week or \$1137.50 per month</p> <p>N/A</p>	<p>\$236.50/week or \$1023.50 per month</p> <p>N/A</p>	<p>\$210.00/week or \$910.00 per month</p> <p>N/A</p>	<p>\$194.50/week or \$841.50 per month</p> <p>N/A</p>	<p>N/A</p> <p>7.5 hours per week</p>
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The examples provided in the chart above are intended to be representative of the point at which the minimum gross earnings, if applicable to the family, are met. The minimum wage of the county or state where the job is located, rather than the county of residence, applies when determining whether applicable minimum gross earnings are met. However, if a higher wage is established by federal law, such wage would apply when determining whether applicable minimum gross earnings are met. Self-employed parent/caretaker relative(s) must meet the applicable gross earnings minimum. (See 95 OTDA INF-33 for self-employment budgeting.) For parent/caretaker relative(s) in jobs that are exempt from minimum wage rules and earning less than minimum wage per hour, there is no applicable minimum gross earnings amount; such parent/caretaker relative(s) must only meet the applicable number of minimum work hours outlined above. For parent/caretaker relative(s) in jobs that are exempt from minimum wage rules and earning minimum wage or more per hour, or who are self-employed and earning at least the equivalent of the minimum wage per hour, there is no applicable number of minimum work hours; such parent/caretaker relative(s) must only meet the applicable minimum gross earnings amount outlined above. However, even when programmatic eligibility has been established, care can only be provided for such hours during which the caregivers are engaged in work. Additionally, to determine which requirements above apply and whether they are met, each parent/caretaker relative must provide sufficient documentation to determine whether they are earning more or less than minimum wage per hour, and whether or not they are employed in a job exempt from minimum wage rules, or self-employed.

For more information regarding the eligibility requirements please refer to 04-OCFS-ADM-01, *Child Care in Lieu of Temporary Assistance*, 05-OCFS-ADM-03, *Child Care Subsidy Program*, and 17-OCFS-INF-07, *Clarification on the Financial Eligibility Requirements for Transitional Child Care*.

**IV. Required Actions**

Due to the increase in the state minimum wage, districts must review and adjust benefits as necessary for all low income and child care cases involving low-income and all cases in lieu of temporary assistance child care assistance cases. Districts must also review and adjust families receiving child care in lieu of temporary assistance to make sure that the families are meeting the new minimum gross earnings requirement and/or minimum number of work hours as set forth above. Districts must send the appropriate notices to those individuals who do not meet

these requirements. For more information about the appropriate notices please refer to 16-OCFS-LCM-03, *30-Day Client Notification for Child Care Subsidy and Revised Client Notices*.

*/s/ Janice M. Molnar*

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**Issued By:**

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