



Office of Children and Family Services

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Local Commissioners Memorandum

Transmittal:	21-OCFS-LCM-33
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	December 29, 2021
Subject:	State Minimum Wage Increase and Its Effect Upon Child Care Assistance
Suggested Distribution:	Directors of Services Day Care Subsidy Supervisors Welfare Management System Coordinators Accounting and Child Welfare Supervisors
Contact Person(s):	Child Care Subsidy Policy Unit, ocfs.sm.districtsupport.subsidy@ocfs.ny.gov
Attachments:	None

I. Purpose

The purpose of this Local Commissioners Memorandum (LCM) is to inform local departments of social services (districts) that the increase in the state minimum wage, effective December 31, 2021, may affect a family's eligibility for child care assistance.

II. Background

New York Labor Law § 652 authorizes increases to the New York State minimum wage. The latest increase will go into effect on December 31, 2021. Minimum wage requirements are 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

However, there are different minimum wage rates for food service workers who receive tips.

The state minimum wage rates are scheduled to increase annually on December 31 until they reach \$15.00 per hour for all locations in the state. The scheduled increases vary by region as shown in the chart below, which is also available on the New York State Department of Labor's (DOL) website. Employers located in New York City previously reached the \$15.00 per hour minimum wage and therefore do not increase on December 31, 2021. Further information can be found at: <https://dol.ny.gov/minimum-wage-0>.

Location	12/31/2021
New York City	\$15.00
Nassau, Suffolk and Westchester	\$15.00
Remainder of New York State	\$13.20

Annual increases for the rest of the state will continue until the rate reaches \$15.00 minimum wage. The December 31, 2022, annual increase will be determined by the New York State Division of the Budget and published by DOL on or before October 1, 2022. Additional information on the minimum wage rate schedule can be obtained by calling 1-888-4-NYSDOL (1-888-469-7365) or logging onto <https://www.labor.ny.gov/home/>.

III. Program Implications

For some families applying for or receiving child care assistance, the increase in the state minimum wage will result in additional income.

21-INF-10, *2021 State Minimum Wage Increase and the Effect on Temporary Assistance and Supplemental Nutrition Assistance Programs*, issued by the New York State Office of Temporary and Disability Assistance (OTDA) on November 15, 2021, covers the effects of the state minimum wage increase on families receiving temporary assistance (TA). Notwithstanding, consistent with 21-OCFS-ADM-30, families in receipt of TA and child care that subsequently lose TA eligibility due to increased income under the minimum wage raise will continue to receive child care for the remainder of the 12-month child care eligibility period unless the family income exceeds 85% of the state median income.

Changes in Circumstances

Title 18 of the Codes, Rules and Regulations of New York State (NYCRR) requires that all applicants for, and recipients of, child care assistance notify the district of changes in financial circumstances that put the family's income over 85% of the state median income, living arrangements, employment, household composition, child care provider or other circumstances that affect the family's need or eligibility for child care services.

Consistent with 21-OCFS-ADM-30, families in receipt of non-TA child care that subsequently experience increased income under the minimum wage raise will continue to receive child care for the remainder of the 12-month child care eligibility period unless the family income exceeds 85% of the state median income.

Child Care in Lieu of Temporary Assistance

The increase in the state minimum wage also affects the required minimum gross earnings of families that receive child care in lieu of temporary assistance. To be eligible for child care assistance in lieu of temporary assistance, an applicant/recipient must be otherwise eligible for temporary assistance, and they must be employed, defined as having gross earnings equal to, or greater than, the required number of work hours multiplied by the state minimum wage. The chart below provides the minimum gross earnings and minimum number of work hours for single and two-parent households applying for, or receiving, child care in lieu of temporary assistance by location.

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.

The examples provided in the chart 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.

Minimum Gross Earnings and Minimum Work Hours for Eligibility for Child Care in Lieu of Temporary Assistance				
	Location/Minimum Wage			Minimum Work Hours
	New York City	Nassau, Suffolk and Westchester	Remainder of New York State	
	Minimum Wage \$15.00/hour	Minimum Wage \$15.00/hour	Minimum Wage \$13.20/hour	
Family	Minimum Gross Earnings¹			
Row 1 Single-parent family where 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	\$262.50/week or \$1137.50 per month	\$262.50/week or \$1137.50 per month	\$231.00/week or \$1001.00 per month	N/A
Row 2 Two-parent family where both parents are employed and earning minimum wage or more per hour <u>or</u> are self-employed and earning at least per hour	\$375.00/week or \$1625.00 per month combined	\$375.00/week or \$1625.00 per month combined	\$330.00/week or \$1430.00 per month combined	
Row 3 Single-parent family 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	17.5 hours per week
Row 4 Two-parent family 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	25 hours per week combined
Row 5 Two-parent family where one parent is employed and earning minimum wage or more per hour <u>or</u> is self-employed and earning at least the	\$262.50/week or \$1137.50 per month	\$262.50/week or \$1137.50 per month	\$231.00/week or \$1001.00 per month	N/A

¹Use 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 to .99 round up to the next .00.

Minimum Gross Earnings and Minimum Work Hours for Eligibility for Child Care in Lieu of Temporary Assistance				
	Location/Minimum Wage			Minimum Work Hours
	New York City	Nassau, Suffolk and Westchester	Remainder of New York State	
	Minimum Wage \$15.00/hour	Minimum Wage \$15.00/hour	Minimum Wage \$13.20/hour	
Family	Minimum Gross Earnings¹			
equivalent of the minimum wage per hour; and one 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	7.5 hours per week

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 plus travel time between the child care provider and the site of employment. 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 are self-employed.

For more information regarding the eligibility requirements for child care in lieu of temporary assistance, please refer to 04-OCFS-ADM-01, *Guaranteed 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*.

Consistent with 21-OCFS-ADM-30, families in receipt of child care in lieu of temporary assistance who subsequently fail to meet the required minimum earnings/hours as specified above will be considered to be in a temporary cessation of work. The case will remain open and assistance unchanged unless the parent/caretaker(s) fail to meet the threshold consistently for three consecutive months, at which time the case must be closed.

IV. Required Actions

Due to the increase in the state minimum wage, districts must review child care assistance cases as outlined herein. Pursuant to 18 NYCRR, part 415, if family income exceeds 85% of the state median income, the case must be closed. Any income-based family share can only be decreased or remain stable during the 12-month eligibility period. As outlined in 21-OCFS-ADM-30, *Changes to Child Care Subsidy Regulations: Parts 404 and 415*, the 12-month eligibility period applies to all cases funded under the NYSCCBG including, temporary assistance (TA) cases, child care in lieu of TA cases,

transitional child care cases and protective cases, even when the family's eligibility for other benefits or services ends and the associated case is closed. For more information about 12-month eligibility, redeterminations and the appropriate notices, please refer to the above-referenced Administrative Directive.

/s/ Janice M. Molnar, Ph.D.

Issued by:

Name: Janice M. Molnar, Ph.D.

Title: Deputy Commissioner

Division/Office: Division of Child Care Services