



Office of Children and Family Services

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Local Commissioners Memorandum

Transmittal:	21-OCFS-LCM-02
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Child Care Services
Date:	February 9, 2021
Subject:	State Minimum Wage Increase and Its Effect Upon Child Care Assistance
Suggested Distribution:	Director of Services Day Care Subsidy Supervisors WMS Coordinators Accounting and Child Welfare Supervisors
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Attachments:	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, 2020, 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 went into effect on December 31, 2020. 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 workers in the fast food industry and those who receive tips.

The state minimum wage rates are scheduled to increase annually on December 31st until they reach \$15.00 per hour. 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 did not increase on December 31, 2020. Further information can be found at:

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

General Minimum Wage Rate Schedule for New York State 2020-2021		
Location	12/31/2020	12/31/2021
New York City	\$15.00	\$15.00
Nassau, Suffolk, and Westchester	\$14.00	\$15.00
Remainder of New York State	\$12.50	TBD

Annual increases for the rest of the state will continue until the rate reaches \$15 minimum wage (and \$10 tipped wage). Starting in 2021, the annual increases will be published by the commissioner of the New York State DOL on or before October 1. They will be based on percentage increases determined by the director of the New York State Division of Budget (DOB), based on economic indices, including the Consumer Price Index.

The enacted legislation also authorizes DOB, as of January 1, 2019, and each January 1st thereafter, until such time as the minimum wage is \$15 per hour in all areas of the state, to conduct an analysis of the state of the economy in each region and the effect of the minimum wage increases to determine whether the scheduled increases in the state minimum wage shall continue up to and including \$15. A report and recommendation will then be sent to DOL’s commissioner.

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.

20-INF-13, *2020 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 December 8, 2020, 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.

Changes in Circumstances

Title 18 of the Codes, Rules and Regulations of New York State requires that all applicants for, and recipients of, 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. Districts must redetermine the family's eligibility whenever case factors indicate.

Child Care in Lieu of Temporary Assistance

The increase in the state minimum wage also affects the required minimum gross earnings of families that are in receipt of 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 in receipt of, 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 Minimum Wage \$15.00/hour	Nassau, Suffolk, and Westchester Minimum Wage \$14.00/hour	Remainder of New York State Minimum Wage \$12.50/hour	
Family	Minimum Gross Earnings¹			
Row 1 Single-parent family 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	\$245.00/week or \$1061.50 per month	\$219.00/week or \$948.00 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 the equivalent of the minimum wage per hour	\$375.00/week or \$1625.00 per month combined	\$350.00/week or \$1516.50 per month combined	\$312.50/week or \$1354.00 per month combined	N/A
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 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	\$262.50/week or \$1137.50 per month N/A	\$245.00/week or \$1061.50 per month N/A	\$219.00/week or \$948.00 per month N/A	N/A 7.5 hours per week

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.

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*.

IV. Required Actions

Due to the increase in the state minimum wage, districts must review and adjust benefits as necessary for child care assistance cases as outlined herein. Districts must review families receiving child care in lieu of temporary assistance to determine whether they 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 or whose benefits are changed. 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

Issued by:

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