



New York State Department of Labor  
David A. Paterson  
M. Patricia Smith, Governor

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August 5, 2008

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Day of Rest, Labor Law §161  
File No.: RO-07-0062

Dear [REDACTED]

I have been asked to respond to your request for a legal opinion regarding Section 161 of the Labor Law. Your letter states that you represent a labor union in the construction industry, the members of which are not those listed in section 161(1) of the New York Labor Law. You further state that anonymous members of the union have complained that employers are taking adverse action against individuals who refuse to work seven days per week. This adverse action can include refusing to hire these individuals or, once hired, terminating or threatening to terminate employment of these individuals. Specifically, your question asks whether Section 161(3) of the Labor Law applies to industries and jobs not covered by section 161(1).

Section 161 of the Labor Law provides, in pertinent part, as follows:

**§161 One Day rest in seven**

1. Every employer operating a factory, mercantile establishment, hotel, restaurant, or freight or passenger elevator in any building or place shall, except as herein otherwise provided, allow every person employed in such establishment or in the care, custody or operation of any such elevator, at least twenty-four consecutive hours of rest in any calendar week. Every employer operating a place in which motion pictures are shown shall allow the projectionist or operator of the motion picture machine and engineers and firemen therein at least twenty-four consecutive hours of rest in any calendar week. Every employer operating a place in which legitimate theatre productions such as dramatic and musical productions are shown or exhibited shall allow all employees, including the performers in the cast therein and engineers and firemen, at least twenty-four consecutive hours of rest in each and every calendar week, but this shall not apply to any place wherein motion pictures, vaudeville or incidental stage

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presentations or a combination thereof are regularly given throughout the week as the established policy of such place; except that engineers and firemen employed in such place shall be allowed at least twenty-four consecutive hours of rest in any calendar week. No employer shall operate such establishment, place or elevator on Sunday unless he shall comply with subdivision three. This section does not authorize any work on Sunday not permitted now or hereafter by law.

Every owner, lessee and operator of a dwelling, apartment, loft and office building, garage, storage place and building, wherein or whereat a watchman or watchmen or engineer or fireman are employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

Every owner, lessee or operator of a warehouse, storagehouse, office, dwelling, apartment, loft and any other building or structure wherein a janitor, superintendent, supervisor or manager or engineer or fireman is employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

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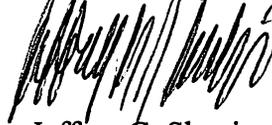
3. Before operating on Sunday, every employer shall designate a day of rest, consisting of at least twenty-four consecutive hours of rest in each and every calendar week for each employee, and shall notify each employee in advance of his or her designated day of rest. No employee shall be permitted to work on his designated day of rest.

While Labor Law §161(3) does not specifically exclude any classes of employees from coverage, section 161 as a whole has been interpreted to be applicable only to the employees and employers specifically enunciated in section 161(1) but not exempted by section 161(2). (See e.g., People v. New York Central Railroad Company, 211 A.D. 195 (First Department, 1924); People ex inf. Hertzberger v. John R. Thompson Vo., 230 A.D. 75 (First Department, 1930).) Therefore, section 161(3) is not applicable to industries and jobs not covered in section 161(1). Unfortunately, your letter does not provide enough information about the nature of the work performed by the workers represented by your client for the Department to render an opinion whether such employees are covered by section 161(1). If you will provide that information to me in a follow-up letter, we will send you a more definitive response to your inquiry.

This opinion is based upon the information provided in your letter of June 25, 2007. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts which have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro". The signature is written in a cursive style with some overlapping strokes.

By: Jeffrey G. Shapiro  
Associate Attorney

JGS:da

cc: Carmine Ruberto