



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

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May 8, 2009



Re: Request for Opinion  
Labor Law §161  
RO-09-0018 (Clarification)

Dear [REDACTED]:

This letter is written in response to your letter dated April 28, 2009 asking for clarification of an opinion letter provided to you on March 30, 2009. In your most recent letter you state that an investigator from the Division of Labor Standards advised you that Labor Law §161(1) requires that a day of rest be provided to all employees who work in a building with an operating elevator. You ask whether the clinical engineers referenced in your prior letter must be provided with a day of rest because they work in such a building and pose an additional question if the answer is "yes." Please be advised that Labor Law §161(1) may not be interpreted as described.

You state that the proposed interpretation of law is based on the following language in Labor Law §161(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.

Please be advised that the Department of Labor interprets the above-quoted language as clearly requiring a day of rest for two classes of employees: 1) "every person employed in such establishment" (*i.e.* a factory, mercantile establishment, hotel, or restaurant); 2) "every person employed ... in the care, custody or operation of any such elevator" (*i.e.* a freight or passenger elevator). Therefore, the statement that a day of rest must be provided to all employees who work in a building with an operating elevator is incorrect. Only persons employed in the care, custody or operation of a freight or passenger elevator need be provided with a day of rest, not all persons employed in the buildings in which such elevators are located.

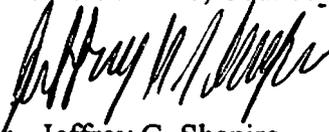
Tel: (518) 457-4380, Fax: (518) 485-1819  
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

Therefore, the answer to your first question is “no.” As your second question is prefaced with the phrase “if the answer to the above question is yes,” no answer to that second question is required.

This opinion is based on the information provided in your letter dated April 28, 2009. A different opinion might result if the circumstances outlined in your letter change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro".

By: Jeffrey G. Shapiro  
Associate Attorney

JGS:  
cc: Carmine Ruberto