



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

March 6, 2009

[REDACTED]

Re: Request for Opinion
Employee Rest Time
RO-09-0027

Dear [REDACTED]:

This letter is written in response to yours of February 10, 2009 in which you ask whether an employer is required to provide employees with eight hours off between each shift. While New York State has no such law, the State does provide certain protections to workers who work long periods of time.

Employees must be paid an additional hour's pay at the minimum wage rate, in addition to the minimum wage required, for any day in which the interval between the beginning and the end of an employee's workday exceeds 10 hours and/or the employee works a split shift in which the day's working hours are not consecutive. (*see* 12 NYCRR §§142-2.4, 142-2.17 and 142-2.18.) However, should the employee's pay for such hours exceed the minimum wage rate plus the additional hour's pay required, no additional compensation is required.

Labor Law Section 161 requires, generally, that employees must be provided at least twenty-four hours consecutive rest in any calendar week. (*see* N.Y. Labor Law §161.) The Department of Labor interprets the term "calendar week" to have its ordinary and usual meaning, to wit: the period from Sunday to Saturday.

Labor Law Section 162 covers employee meal periods. Labor Law Section 162(1) requires a person employed in or in connection with a factory to have at least a sixty-minute noon day meal. Section 162(2) requires other persons employed in an establishment or occupation under the provisions of the Labor Law to have at least a thirty-minute noon day meal. The Department of Labor interprets the term "noon day meal" as extending from 11:00 a.m. to 2:00 p.m., meaning that the hours of employment must extend through the noon day meal period. An employee must be provided a meal period in all situations where he or she works in excess of six hours, and those hours encompass the period between 11:00 a.m. and 2:00 p.m. For example,

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

an employee working from 6:30 a.m. to 1:00 p.m. would not be required to take a lunch break, as lunch can be taken upon the completion of the work day at 1:00 p.m. However, if the work day were to be from 9:00 a.m. to 3:30 p.m., a lunch break would be required by law.

Section 162(3) requires that every person employed for a period starting before 11:00 a.m. and continuing later than 7:00 p.m. must be allowed an additional meal period of at least twenty minutes between 5:00 p.m. and 7:00 p.m. Section 162(4) extends non-factory workers' meal period to forty-five minutes when the person works between the hours of 1:00 p.m. and 6:00 a.m.

While there is no provision in law requiring an employer to pay employees for full meal periods, rest periods of short duration (five to twenty minutes) are customarily paid as work time and must be counted as hours worked. (*see* 29 CFR 785.18)

Additionally, it is worth noting that non-residential¹ employees must be paid at a rate not less than one and one half times their regular rate² for all hours worked in excess of forty during any workweek. (*see* 12 NYCRR §142-2.2.)

Copies of all of the statutes and regulations referenced above are enclosed for your review. This opinion is based on the information provided in your letter of February 13, 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



By: Jeffrey G. Shapiro
Associate Attorney

JGS:da
Enclosure
cc: Carmine Ruberto

¹ Overtime rate for residential employees is required for all hours worked in excess of forty-four hours per workweek.

² Employees exempt pursuant to the overtime provisions of the Federal Fair Labor Standards Act must be paid at a rate not less than one and one half times the minimum wage rate.