



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

December 23, 2010

[REDACTED]
[REDACTED]
[REDACTED]

Re: Request for Opinion
Paycheck by Mail
RO-10-0179

Dear Mr. [REDACTED]:

This letter is written in response to your letter dated November 16, 2010, in which you request an opinion regarding several practices involving the use of payroll/debit cards for the payment of wages. Your letter states that you represent a group of [REDACTED] franchisees who operate convenience stores in New York State and that [REDACTED], the franchisor, has informed your client of its intention to begin using a paperless payroll system whereby employees will be required to receive pay either by direct deposit or via payroll/debit card¹. However, in recognition of the fact that consent for such payments is required for employees not working in a bona fide professional, administrative or executive capacity earning in excess of nine-hundred dollars per week, the franchisor intends to send non-consenting employees their paychecks via mail to their residence. Your letter asks whether the practice of distributing the paycheck of employees who did not consent to electronic payroll via mail is permissible under the New York State Labor Law.

Section 191 of the Labor Law requires the timely payment in full of an employee's agreed upon wages and sets forth the frequency of such payments for particular categories of employees. For example, manual workers must be paid weekly and not later than seven days after the end of the week in which their wages are earned (Labor Law §191(1)(a)(i)), while clerical and other workers must be paid in accordance with the agreed terms of employment, but not less than semi-monthly, on regular pay days designated by the employer. (Labor Law

¹ While the specifics of the plan are not described in this opinion, it is worth noting that the practices of the payroll card program described in your letter appear to meet the requirements for such programs as they have been previously enunciated by this Department. (See, Opinion Letters RO-08-0001 and RO-09-0158, available online at <http://labor.ny.gov/legal/counsel/counsel-opinion-letters.page>.)

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

§191(1)(d).) While the practice of mailing an employee his or her paycheck may satisfy an employer's obligations under Section 191 of the Labor Law, an employer will have violated that Section should the paycheck fail to reach the employee on or before the date required (emphasis added). Your letter points out this possibility wherein it notes that the "timely receipt of mailed checks may be affected by weather and holidays, and 'The Franchisee employee base moves frequently', requiring employees to remember to change their address in order to avoid delays or returned checks." Accordingly, while such a practice does not itself result in a violation of Section 191 of the Labor Law, please be advised that any delay beyond the frequency required for such payments violates that Section. Consequently, employers who wish to ensure that payment is made in a timely fashion and that timeliness is not adversely affected by issues such as mailing errors or delays may wish to consider distributing paychecks by means other than mailing.

This opinion is based exclusively on the facts and circumstances described in your letter dated November 16, 2010, and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By: 

Michael Paglialonga
Assistant Attorney II

MP

cc: Carmine Ruberto