



New York State Department of Labor

David A. Paterson, Governor

Colleen C. Gardner, Commissioner

June 3, 2010



Re: Request for Opinion
Labor Law §195(1)
RO-10-0001

Dear [REDACTED]:

This letter is written in response to your letter dated December 28, 2009, in which you request an opinion regarding the requirements of Section 195(1) of the Labor Law. Your letter seeks confirmation as to the following information points, obtained from discussions with representatives from the Department, regarding the following requirements for compliance with Section 195(1). Those information points, which are paraphrased in italics, are discussed individually below.

- (1) Employers are not required to use the forms provided on the Department's website, but the forms used by employers must be separate and may not be integrated into an offer letter.*

While the Department developed the standardized forms found on its website¹ to assist employers in meeting the requirements of Section 195(1), these forms are samples or models for employers' use in satisfying employee notice obligations under Section 195(1). However, an employer's use of the appropriate form developed by the Department in accordance with the accompanying guidelines, while not required, is strongly encouraged as it will, in the opinion of this Department, ensure full compliance with their obligations under Section 195(1). An employer may include such forms with a packet or other materials given to an employee in connection with an offer letter, but the acknowledgement must be in a form independent from the letter and other materials included with the letter so as to ensure that the employee directly acknowledges the receipt of that form. The form and timing of the notice is intended was intended to put the information in the hands of the worker at the time of hiring and in an easily understandable form. Expecting a worker to read through or otherwise find this information in a

¹ <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>

intended to put the information in the hands of the worker at the time of hiring and in an easily understandable form. Expecting a worker to read through or otherwise find this information in a possibly lengthy document, letter, or proposed employment contract does not satisfy these purposes.

- (2) Any forms created by employers should include the same elements/questions that are on the model forms used by the Department, but it does not need to be identical.*

As stated above, the Department developed the standardized forms to assist employers with meeting the requirements of Section 195(1). While employers are free to modify those forms or create forms customized to their business, the content and form of those models has been deemed to be appropriate and required by the Commissioner of Labor. As such, the content of forms created by employers should include, at the very least, all of the elements, questions, and information as the forms promulgated by the Department.

- (3) The form must indicate the amount of overtime pay, not just how such overtime pay is calculated.*

The above statement is accurate except for cases in which an employee's overtime rate will vary from week to week, such as employees that earn multiple hourly rates from the same employer. In such situations, the employer should provide a statement which explains the method by which the employee's overtime rate is calculated. An example of such a statement may be found in the Department's model form for employees earning multiple rates of pay (LS 55).

- (4) The form needs only to indicate the frequency of pay or specific pay dates to satisfy the designated pay day requirement.*

Contrary to the information you may have previously received, the notice required by Section 195(1) must contain the specific pay dates; not merely the frequency of pay required by Section 191 of the Labor Law. The reference to Section 191 in Section 195(1) operates as a reminder and reaffirmation that employees are required to be paid in accordance with the frequency of pay requirements in Section 191 of the Labor Law.

- (5) The law is effective for individuals whose hire date is on or after October 26, 2009 or later. It is not based on actual start date.*

The above statement is accurate. Additionally, please be advised that prior to the amendment which went into effect October 26, 2009, employers were required to notify employees, at their time of hire, of their rate of pay and designated pay date. Prior to the recent amendment, however, such notice was not required to be in writing or acknowledged by the employee.

- (6) An editable or customizable version of the Department's form is not available at this time.*

The Department of Labor encourages employers to utilize the forms provided on its website to help ensure compliance with Section 195(1). Customizable forms could discourage such a practice and give rise to difficulties in determining whether an employer has complied with the requirements of that Section. Accordingly, editable or customizable forms have not been made available by the Department.

This opinion is based exclusively on the facts and circumstances described in your request 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: Jeffrey G. Shapiro
Associate Attorney

JGS:mp
cc: Carmine Ruberto