

OPINION  
FILE



New York State Department of Labor  
Elliot Spitzer, Governor  
M. Patricia Smith, Commissioner

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April 19, 2007



Re: Request for Opinion  
Meal Breaks - Labor Law §162  
Our File No.: RO-07-0034

Dear [REDACTED]:

I have been asked to respond to your letter of April 9, 2007 in which you ask "whether or not it is lawful in New York State to require employees to take a 60 minute unpaid meal break." You specify that your question relates to "employees who work in a factory setting but do not produce goods: they are employed solely to do repairs." You ask whether such employees fall under the definition of "factory worker" under New York law "and can an employer require them to take a 60 minute unpaid meal break?" For the reasons set forth below, the Department has determined that the unpaid meal breaks for the employees described in your correspondence are required under the Labor Law.

The New York statute requiring meal breaks is Labor Law §162, paragraph 1 of which states, in full: "(e)very person employed in or in connection with a factory shall be allowed at least sixty minutes for the noon day meal." As you can see, the term, "factory worker" is not used in this or any other part of §162. Instead, the phrase used is "person employed in *or in connection with* a factory." (Emphasis added). Labor Law §2(9) defines "factory," in relevant part, as an establishment "where one or more persons are employed at manufacturing, including making, altering, *repairing*, finishing, bottling, canning, cleaning or laundering any article or thing, in whole or in part . . ." (Emphasis added). Based on these facts, it is this Department's interpretation that a person employed to do repairs in a factory is a "person employed in or in connection with a factory." Therefore, as such person must, by law, be provided with 60 minute meal breaks, an employer who requires persons employed to do repair work in a factory to take 60 minute meal breaks is merely complying with Labor Law §162(1).

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There is, however, no corresponding statutory requirement that employees be paid for meal breaks. Federal Regulation 29 CFR §785.19(a), promulgated under the authority of the Fair Labor Standards Act (FLSA) states, in relevant part, that "(b)ona fide meal periods are not worktime." This is in contrast to 29 CFR §785.18 which states, in relevant part, that "(r)est periods of short duration, running from 5 minutes to about 20 minutes, are common in industry . . . and are customarily paid as working time. They must be counted as hours worked." As there is no comparable New York State statutes or regulations providing greater benefit to employees these federal regulations are controlling (*see* 29 USC §218).

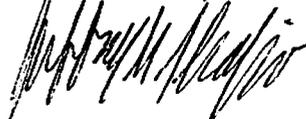
Labor Law §191 requires the payment of "wages," which term is defined in Labor Law §190(1) as, in relevant part, "the earnings of an employee for labor or services rendered." As bona fide meal periods are not working time, they are not periods in which labor or services are being rendered. Therefore, an employer is under no obligation to pay wages for time spent in bona fide meal periods.

Accordingly, as Labor Law §162 requires employers to provide 60 minute meal periods to persons employed to do repair work in factories, and as Labor Law §191 does not require employers to pay wages for time spent during bona fide meal periods, it is lawful in New York State to require such employees to take a 60 minute unpaid meal break

This opinion is based upon the information provided in your letter of April 9, 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



By: Jeffrey G. Shapiro  
Senior Attorney

cc: Carmine Ruberto

JGS:dmm

bcc: **Opinion File**  
Jeffrey G. Shapiro, Counsel  
CO Dayfile (RO-07-0034)