



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

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April 15, 2009

[REDACTED]

Re: Request for Opinion  
Meal Periods  
RO-09-0035

Dear [REDACTED]

I have been asked to respond to your email of February 12, 2009 to Maria Colavito in which you state that you had an inquiry from one of your member companies, an engineering firm, which would like to start hour-long lunchtime "brown bag" training sessions from time-to-time in their office. Your letter states that the presentations might be vendors demonstrating new products or experts presenting new engineering concepts, methods, products, or services. All employees would be invited, the sessions would be strictly voluntary, and in some cases lunch would be provided by the vendor or presenter to attract attendees. Your letter asks whether these sessions fulfill the meal period requirement if the employee chooses to attend these sessions during his/her customary lunch period.

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, 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.

Federal regulation 29 CFR §778.223, in relevant part, states:

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As a general rule the term "hours worked" will include: (a) All time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (b) all time during which an employee is suffered or permitted to work whether or not he is required to do so.

The Department's general interpretation of these provisions is that any time that would constitute "hours worked" may not be counted for purposes of satisfying the meal period requirements in Labor Law §162. In the present situation, since the employees in question would not be required to be on duty or remain at the workplace during the time in which they would be attending the "brown-bag" training sessions, the time would not constitute "hours worked," and may therefore fulfill the state law's meal period requirement. Furthermore, it is this Department's opinion that voluntary attendance at a "brown bag" training session where new products or engineering concepts are presented does not constitute time in which an employee is suffered or permitted to work. However, should the employer's policy or practice result in an employee's non-attendance negatively affecting his/her employment, the sessions would no longer be voluntary and must be counted as "hours worked."

This opinion is based on the information provided in your email dated February 12, 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

  
Jeffrey Shapiro  
Associate Attorney

cc: Carmine Ruberto