



New York State Department of Labor

David A. Paterson, *Governor*

M. Patricia Smith, *Commissioner*

August 19, 2008



Re: Request for Opinion
Payment for Hours Worked
RO-08-0044

Dear [REDACTED]:

I have been asked to respond to your letter of April 18, 2008. Please accept my apology for the late response to your request. Your letter describes a policy pursuant to which employees are paid for actual hours worked for the first thirty-seven and one-half hours per week at their regular rate of pay. If the employee works at least thirty-seven and one-half hours, but less than forty hours per week, the employees are paid at the regular rate for forty hours. If the employee works more than forty hours in a work week, the employee is paid for forty hours at the regular rate and at one and one half times the regular rate for all hours worked in excess of forty.

Your letter provides an example of this policy in which an employee earning ten dollars an hour will be compensated in the following way:

- (1) Less than 37.5 hours worked - \$10 multiplied by actual hours worked;
- (2) Between 37.5 hours worked and 40 hours worked - \$400; and
- (3) Greater than 40 hours worked - \$400 for the first 40 hours worked, time and one half for hours worked in excess of forty.

Your letter asks whether the pay practices described comply with the New York Labor Law.

The policy you describe is in compliance with the New York State Labor Law as long as the "regular rate" is considered to be the same as the rate at which the employee is compensated for all other hours of work. In other words, the "regular rate" may not be less than any hourly rate at which the employee is compensated for calculation of hours in excess of forty a week. In your example, the "regular rate" would be \$10 per hour, regardless of the number of hours worked, and the rate for hours in excess of forty would be one and one half times that, or \$15 per hour.

This opinion is based on the information provided in your letter of April 18, 2008. A different opinion might result if the circumstances outlined in your letter changed, if the facts provided were not accurate, or if any other relevant fact was not provided.

Very truly yours,

Maria L. Colavito, Counsel

By: Jeffrey G. Shapiro
Associate Attorney

JGS:jc

cc: Carmine Ruberto