



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

December 15, 2009

[REDACTED]

Re: Request for Opinion
Labor Law §195(1)
RO-09-0167

Dear [REDACTED]:

This letter is written in response to your email of November 6, 2009 in which you express concern over the Department's implementation of Section 195(1) of the Labor Law, which was recently amended [effective October 26, 2009] to read as follows:

Every employer shall *** 1. notify his or her employees, in writing, at the time of hiring of the rate of pay and of the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article, and *obtain a written acknowledgement from each employee of receipt of this notice*. Such acknowledgement shall conform to any requirements established by the commissioner with regard to content and form. For all employees who are eligible for overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law or regulation, the *notice must state the regular hourly rate and overtime rate of pay. (Emphasis supplied)*

You expressed some concern at learning that the Department was planning to require employers to use specific forms in satisfaction of their obligation under Section 195(1). You assert that the use of required forms is not contained in the statute and that the content of the forms, as you understand them, exceeds the requirements contained in the statute. You request that the Department consider changing its position to permit employers to use either the forms promulgated by the Department or their own.

While the Department developed the standardized forms found on its website to assist employers in meeting the requirements of the new law, based upon feedback received from a number of employer representatives, including yourself, it has been

determined that the Department's forms will serve as samples or models for the satisfaction of employers' obligations under Section 195(1). 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).

Furthermore, while the use of official forms is, at this time, not required, the Department reserves its right to require employers to use forms developed by the Department should it become apparent that the notice being used by employers is falling short of the requirements of the statute. Although your email asserts that the Department does not have the authority to require the use of official forms, Section 195(1) clearly provides such authority wherein it states that the acknowledgement "shall conform to any requirements established by the commissioner with regard to content and form."

As part of its assessment with regard to the sufficiency of notice being provided by employers using their own forms, the Department would like to invite your member organizations to submit, to this office, a sample of forms that they plan to use, or are using, in lieu of the Department's model forms. These forms may be sent to the following address:

Counsel's Office
State Office Campus
Building 12—Room 509
Albany, New York 12240

Your email also expressed concern with regard to the content of the required notice. In particular, you did not believe that the statute required written acknowledgment of the notice and that information regarding exemption from overtime payments also fell outside the statutory scheme. Please note that the new statute clearly requires written acknowledgment of the notice and requires all employees eligible for overtime to be notified of their overtime rate of pay. We strongly encourage your members to notify their employees if they are exempt from overtime to avoid unnecessary complaints and investigations regarding the lack of overtime rate notice.

I trust this information is responsive to your email. Please do not hesitate to contact me should you have further questions with regard to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Patricia Smith", written in a cursive style.

M. Patricia Smith