



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

February 15, 2008

[REDACTED]

Re: Request For Opinion
On-Call Time
File No.: RO 08-002

Dear [REDACTED]:

This letter is written in response to your request for an opinion dated November 7, 2007. Please accept my apologies for this late response to your request. You pose a situation in which non-exempt employees regularly work 5 days per week, 7 hours per day. In addition, such employees are also assigned "on-call" duties involving receipt of telephone calls. Such calls are received outside the employer's offices on a cell phone provided by the employer. The employee is free to engage in or perform any activity during this time, provided he/she remains within cellular service range. You ask whether such an employee must be paid for all time during which he/she is assigned to on-call status, or only for the time spent (if any) in actually performing duties during such time.

Federal Regulation 29 C.F.R. §785.17 provides that:

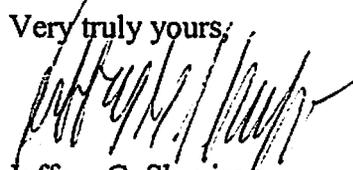
An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call (citations omitted).

This Department has issued previous opinions stating that when an employee is required to carry a "beeper," remain within the beeper's range, and respond to the beeper when called; the situation is analogous to an employee who is "required to leave word at his home or with company officials where he may be reached." As such employees are not considered to be working while on-call; they may be compensated only for the time spent actually working, and not for all time spent on-call. As an employer-provided cell phone is the equivalent of an employer-provided beeper, such employees may also be compensated only for the time spent actually working.

Phone: (518) 457-4380 Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

This opinion is based upon the information provided in your letter of November 7, 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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro", written over the typed name below.

Jeffrey G. Shapiro
Senior Attorney

JGS:jc