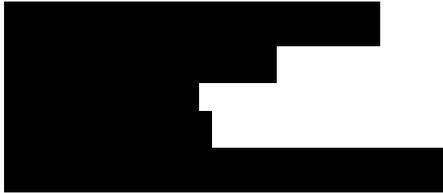




New York State Department of Labor
Eliot Spitzer, Governor
M. Patricia Smith, Commissioner

July 18, 2007



Re: Request for Opinion
Truck Drivers - Hours of Operation
File No.: RO-07-0060

Dear [REDACTED]:

I have been asked to respond to your letter of June 18, 2007 in which you state that you have a client who employs tractor-trailer drivers to transport goods in interstate commerce. You ask whether this client must comply with 12 NYCRR §175.7. You state that you have been advised by the Federal Motor Carrier Safety Administration that this Department has not enforced this regulation in many years, and that "the New York State Department of Labor has adopted and enforces the federal Department of Labor regulations ... as set forth in 49 C.F.R. 395.3." Please be advised that while it is true that this Department no longer enforces 12 NYCRR §175.7, 49 CFR §395.3 has, upon information and belief, been adopted and is enforced by the New York State Department of Transportation.

The regulations contained in 12 NYCRR Part 175 (Operators of Motor Trucks and/or Motor Buses) were promulgated pursuant to Labor Law §167. Labor Law §167 was repealed in 1974 by the same legislation (L. 1974, c. 342) that created Article 9-A of the Transportation Law. According to the legislative history of this chapter, it was enacted for the specified purpose of transferring authority over the hours of labor of drivers of trucks and buses from the Commissioner of Labor to the Commissioner of Transportation.

Pursuant to Transportation Law §211, the Commissioner of Transportation has promulgated 17 NYCRR §820.6 by which 49 CFR Part 395 was adopted as applicable to "all motor carriers and drivers of commercial motor vehicles as defined in section 820.1 of this Part" whether operating in interstate or foreign commerce (17 NYCRR §820.6(a)) or in intrastate commerce with certain exceptions (17 NYCRR §820.6(b)).

The answer to your question, therefore, is that the Department of Labor has not recently enforced 12 NYCRR §175.7 as it has not had the authority to do so since 1974. Any questions regarding the enforcement of this regulation, and its relationship, if any, to 49 CFR §395.3 should be directed to the Commissioner of Transportation.

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This opinion is based upon the information provided in your letter of June 18, 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,

Maria L. Colavito, Counsel

By: Jeffrey G. Shapiro
Senior Attorney

cc: Carmine Ruberto

JGS: