



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

March 2, 2009

[REDACTED]

Re: Request for Opinion
Call-In Pay Rate
RO-08-0085

Dear [REDACTED]:

This letter is written in response to your request for an opinion dated July 9, 2008 in which you state that your firm is counsel to several fine-dining restaurants in Manhattan. The questions raised in your request are addressed individually below.

1. Does an employee need to be paid the call-in rate if he/she reports to work for one hour and then leaves for a personal reason, such as to attend to a broken water heater at home?

Under 12 NYCRR §137-1.6, employees are entitled to pay at the minimum wage rate for at least three hours or for the number of hours in a regularly scheduled shift, whichever is less. Under the circumstances you describe, if the facts and circumstances clearly indicate that the employee leaves employment of his/her own volition for his/her own reasons, and not at the direction or request of the employer, then the employee may be paid only for the time actually present at work, and not for the full amounts of time required by 12 NYCRR §137-1.6.

2. If in fact, it is the employee who voluntarily wants to leave work, while the restaurant wants them to stay (the employee nevertheless chooses to go home), is the restaurant obligated to pay the full three hours?

See response to Question 1, above.

3. Where an employee is required to come in to work only for employee training programs, testing, or staff meetings that last less than three hours, is the employer still obligated to pay the employee for three hours?

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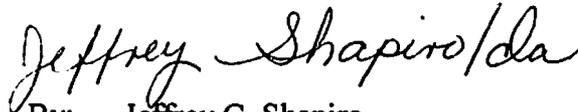
The wages required by 12 NYCRR §137-1.6 must be paid if the employee “reports for duty.” If attendance at employee training programs, testing or staff meetings is required by the employer, then all such attendance would be considered reporting for duty and call-in pay would be required.

12 NYCRR §137-1.6 clearly provides that an employer who requires an employee to report to work must pay that employee for a certain minimum number of hours. As described above, requiring an employee to report for employee training programs, testing or staff meetings would all be considered as requiring an employee to report to work. Therefore, in direct answer to your third question, if the employer requires an employee to report for training, testing or a meeting that lasts less than three hours, the employer must pay that employee for at least three hours of work.

This opinion is based on the information provided in your letter of July 9, 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. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in cursive script that reads "Jeffrey Shapiro/da".

By: Jeffrey G. Shapiro
Associate Attorney

JGS:da

cc: Carmine Ruberto