



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

October 5, 2009



Re: Request for Opinion
Call-in Pay
12 NYCRR §142-2.3
RO-09-0117

Dear [Redacted]:

This letter is written in response to your letter of August 18, 2009 in which you request an opinion as to the applicability of 12 NYCRR §142-2.3 to a situation in which an employee is required to attend a one-half hour staff meeting at 9:00 a.m. on Tuesdays, after which he/she is free to leave the premises and tend to his/her own affairs prior to returning that afternoon at 1:00 p.m. to work his/her shift until 6:00 p.m. Your letter asks whether the employee is entitled to call-in pay for his/her attendance at the Tuesday morning meeting in light of the employee's regularly scheduled five hour shift that same day. Your letter correctly acknowledges that the employees in question would be entitled to split-shift¹ and possibly spread of hours pay², but limits the inquiry to the application of the call-in pay requirements. Your letter further asks how the term "regularly scheduled shift" is defined and whether a half-hour staff meeting would fit within its meeting.

12 NYCRR 142-2.3, as you state in your letter, provides that "an employee who by request or permission of the employer reports for work on any day shall be paid for at

¹ The situation you describe would likely require that the employee be paid an additional hour's pay, at the basis minimum wage rate, in addition to the minimum wage required since the employee is working a split shift. (12 NYCRR §142-2.4.)

² Should the employee work more than ten hours in any workday, the employee would be required to be paid an additional hour's pay, at the basis minimum wage rate, in addition to the minimum wage required since the employee is working a split shift. (12 NYCRR §142-2.4.)

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least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum wage” That regulation entitles employees to a minimum payment for reporting to work “on any day” and is thereby based on a daily basis, rather than on a basis of the number of times an employee is requested or permitted to report to work for the day. Accordingly, you are correct in your understanding that the call-in pay requirements in 12 NYCRR §142-2.3 are not triggered when an employee reports for work for an additional period on a day in which the employee is provided work for a regularly scheduled shift in excess of four hours. Such a scenario, however, as noted above, would require the employee be paid an additional hour’s pay at the minimum wage rate pursuant to the split shift requirement in 12 NYCRR §142-2.4.

As you stated in your letter, the term “regularly scheduled shift” is not defined by the New York State Labor Law or the regulations promulgated thereunder. In interpreting that term, the Department looks to its plain meaning. (*See*, McKinney’s Statutes §95.) The plain meaning of the term requires *regularity* and thereby excludes special staff meetings and other infrequently occurring events which require the employee to report for work at a time different than in a normal workday. Moreover, the context in which the term is found, the Minimum Wage Orders, dictates that the Department narrowly assess the issue of regularity in assessing the situation. Those Wage Orders are intended to guarantee persons wages sufficient to provide adequate maintenance for themselves and their families and should be construed so as to confer the maximum benefit on employees. (*See*, Labor Law §650.) Accordingly, in determining whether a meeting is part of a “regularly scheduled shift,” the Department looks at the following factors: (1) the frequency of the meeting’s occurrence, (2) the regularity of the meeting’s occurrence, (3) the employee’s ability to anticipate the meeting’s occurrence, and (4) whether the employees in attendance would consider the meeting outside of their regularly scheduled work hours.

Applying this interpretation to the examples provided in your letter, a regular monthly staff meeting is not likely to be considered within the definition of the term “regularly scheduled shift” since such meeting only occurs once a month and would, therefore, fall outside of the meaning of the term “regularly scheduled shift.” A prescheduled weekly staff meeting, on the other hand, is likely to fall within the meaning of the term “regularly scheduled shift” based on its frequency, regularity of occurrence, the employees’ ability to anticipate its occurrence, and the likelihood that the meeting would be considered by the employees to be part of their regularly scheduled work hours. The meetings referred to in your letter which are less frequent, i.e. every couple of months, also do not fit within the meaning of the term “regularly scheduled shift” since they are both irregular and infrequent. As a general matter, the Department will consider a regular meeting that occurs less frequently than once per pay period to fall outside of the meaning of the term “regularly scheduled shift.”

This opinion is based on the information provided in your letter of July 22, 2009. A different opinion might result if the circumstances outlined in your letter change, 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

By: 

Jeffrey G. Shapiro
Associate Attorney

JGS:mp
cc: Carmine Ruberto