



New York State Department of Labor
Andrew M. Cuomo, Governor
Colleen Gardner, Commissioner

January 12, 2011

[REDACTED]

Re: Request for Opinion
Day/Job Rates
RO-10-0029

Dear [REDACTED]:

I have been asked to respond to your letter of February 25, 2010, in which you request an opinion as to the permissibility of day and job rates under the New York State Labor Law¹. The two questions posed in your letter are addressed individually below:

In response to your first question, which asks if the use of day rate or job rate pay is permissible under the New York State Labor Law, please be advised that such methods of pay are permissible under 12 NYCRR Part 142 so long as the employee is paid not less than the applicable minimum wage rate and any overtime premium. However, if an overtime eligible employee works more than forty hours in a workweek, the employer must calculate the employee's regular rate (total regular pay divided by total hours worked [12 NYCRR 142-2.16]), calculate the overtime premium (1/2 the regular rate [12 NYCRR 142-2.2]), multiply the overtime premium by the number of overtime hours [12 NYCRR 142-2.2], and pay the overtime premium *in addition to* the day rate and/or job rate paid to the employee.

In response to your second question, which asks if an employer can combine the day rate and job rate payment methods so as to provide for an incentive pay for increased productivity, please be advised that such a payment method would be permissible under 12

¹ Since your letter specifically references 12 NYCRR Part 142 and relates to truck drivers who appear to be within the coverage of that Part, this response is limited to that Part. (See also, 12 NYCRR 146-2.5, which requires the payment of hourly rates for all employees except commission salespersons for employees in the Hospitality Industry.)

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NYCRR Part 142 assuming the overtime requirements, which are summarized above, are also met.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel
By: 
Michael Paglialonga
Assistant Attorney II

cc: Carmine Ruberto