



New York State Department of Labor  
David A. Paterson, Governor  
Colleen C. Gardner, Commissioner

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May 5, 2010

[REDACTED]

Re: Request for Opinion  
Article 9 Break Periods  
[REDACTED]  
RO-10-0036

Dear [REDACTED]:

This letter is written in response to your letter dated March 18, 2010, in which you request an opinion as to whether breaks and lunches are required to be paid. Your letter contained pages from a bid specification for a building service contract for security services for the [REDACTED]. This Department has determined that the work in question is subject to Article 9 of the Labor Law, and has issued a prevailing wage schedule for the project. The breaks described in the bid specifications require security officers to work from 8:00 a.m. to 5:00 p.m. and take all breaks, including lunch periods, on the premises in designated areas. Your letter asks whether the breaks and lunches allowed on this contract qualify to be "unpaid."

As a preliminary matter, it is important to note that this letter is not intended to provide an interpretation of the requirements of any contract or the bid requirements contained in your letter. Rather it is an opinion as to the requirements of the New York State Labor Law. The employer may be subject to additional contractual obligations in excess of the legal requirements outlined in this letter, and nothing in this letter should be interpreted to relieve the employer of such requirements.

Article 9 of the Labor Law requires that employees working pursuant to building service contracts be paid not less than the prevailing wage. (Labor Law §231(1).) Generally, that payment is only required for all hours worked, and employees are not entitled to be paid wages for hours not spent working. Although Article 9 of the New York State Labor Law does not define what constitutes hours worked, the Department looks to federal regulation 29 CFR Part 785, which sets forth the relevant provisions regarding computing hours worked, for guidance in this area.

Regulation 29 CFR Part 785 contains two regulations specifically dealing with rest and meal periods. Regulation 29 CFR §785.18, which deals with rest periods, provides, in full, as follows:

§ 785.18 Rest. Rest periods of short duration, running from 5 minutes to about 20 minutes, are common in industry. They promote the efficiency of the employee and are customarily paid for as working time. They must be counted as hours worked. Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time. [citations omitted]

Regulation 29 CFR §785.19, which deals with meal periods, provides in full, as follows:

§ 785.19 Meal. (a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. [citations omitted]

(b) Where no permission to leave premises. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

Your letter, and the bid specifications enclosed therewith, unfortunately does not provide a sufficient basis upon which to evaluate whether the break and meal periods are required to be counted as hours worked, and thus, that they be paid. After a review of the relevant regulatory language quoted above, should you still require an opinion as to this issue, please respond to this letter with a detailed description of the meal or break period in question, and any particular issues you have.

Very truly yours,

Maria L. Colavito, Counsel

By:



Jeffrey Shapiro  
Associate Attorney

cc:



Opinion File  
Dayfile