



New York State Department of Labor

David A. Paterson, *Governor*

Colleen Gardner, *Commissioner*

November 8, 2010

[REDACTED]

Re: Request for Opinion
Deceased Employees
RO-10-0165

Dear [REDACTED]:

I have been asked to respond to your email to Maria Colavito on October 28, 2010, regarding a private employer's obligation to contact the next of kin or the estate representative of a deceased employee where the employer, in this case a vendor of the County, owes wages to that employee.

Section 191 of the Labor Law requires the timely payment in full of an employee's agreed upon wages and sets forth the frequency of such payments for particular categories of employees. For example, manual workers must be paid weekly and not later than seven days after the end of the week in which their wages are earned (Labor Law §191(1)(a)(i)), while clerical and other workers must be paid in accordance with the agreed terms of employment, but not less than semi-monthly, on regular pay days designated by the employer (Labor Law §191(1)(d).) While nothing in the New York Labor Law specifically requires that employers contact the estate representative or next of kin of a deceased employee, Section 191 of the Labor Law is interpreted by this Department to require that employers make reasonable efforts to make such payment within the time periods specified in that Section. Reasonable efforts should include at least all of the following: contacting any emergency contact or next of kin identified in the employee's personnel file; attempting to contact any known family or friends of the employee, if other than the emergency contact; contacting the Surrogate's Court to determine whether estate or probate proceedings have been commenced and an estate administrator identified; reviewing obituary notices to locate the widow, widower or other family member of the deceased employee; speaking with the funeral director handling the

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deceased's funeral arrangements to either obtain contact information on the deceased's family or to send a message to the family to be in contact with the employer; contacting insurers on company sponsored life insurance to identify beneficiaries who can be contacted for estate information; contacting the County Health Department or other entity that issues Death Certificate to find out the identity of the next of kin listed on the Certificate. It is the Department's opinion that an employer should exhaust these methods of identifying a responsible party before the employer can be excused from its obligation to pay wages owed to the deceased employee in a timely fashion. None of these requirements is unduly burdensome on the employer; balanced against the reasonable efforts that these inquiries involve is the equitable notion that the employer should not be able to financially benefit from the death of an employee when the wages in question were earned by the employee and should be paid to his/her heirs, successors, or assigns. In addition to these efforts, the employer may certainly undertake any additional efforts designed to identify an appropriate contact. If, after these efforts, the employer is unable to locate or contact the estate representative or next of kin of the employee, the employer must retain the wages in an escrow or similar account for a period of three years and thereafter remit the funds to the Office of the State Comptroller. (See, Abandoned Property Law §1315(1-a).)

Applying these requirements to the present case, it appears the present employer has not taken reasonable efforts to contact the estate representative or next of kin of the employee as set forth above and may, as a consequence, be in violation of Section 191 of the Labor Law. Accordingly, please do not hesitate to provide us with the employer's name, address, and all relevant documentation so that we may begin an investigation into the matter.

This opinion is based exclusively on the facts and circumstances described in your email and subsequent communication, 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 I

CC: Carmine Ruberto