



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

March 30, 2009

[REDACTED]

Re: Request for Opinion
Labor Law §161
RO-09-0018

Dear [REDACTED]:

This letter is written in response to your letter dated February 10, 2009 and a subsequent conversation in which you requested an opinion on behalf of your client who operates a hospital facility in the State of New York. Your letter states that your client employs clinical engineers who service and maintain medical equipment, that these engineers typically work 40 hours per week and that they are assigned on-call responsibilities one week per month, requiring them to respond to any equipment issues at night or on weekends. While on call, these clinical engineers are not required to be present at work and may otherwise be at home or conduct personal business. The question(s) posed in your letter is addressed below.

1. Does the "one day rest in seven" rule at Section 161.1 extend to clinical engineers and similar specialized engineering technicians? In other words, must an employer allow clinical engineers at least 24 hours of rest each and every calendar week?

As quoted in your letter, paragraph three of Section 161(1) provides, in relevant part:

Every owner, lessee or operator of a warehouse, storagehouse, office, dwelling, apartment, loft and any other building or structure wherein a janitor, superintendent, supervisor or manager or engineer or fireman is employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

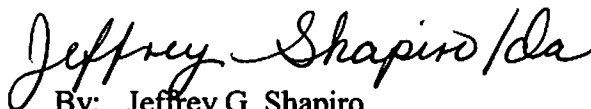
The employees listed in the above-captioned provision, when taken as a whole, are those who perform work incidental to the building or structure in which they are employed or the equipment which is essential to the building operation. As an example, a stationary engineer who is responsible for the maintenance of boilers or heating, ventilating, and air conditioning equipment would be covered by this language. Similarly, an engineer employed in a building to maintain escalators and elevators would also be covered because this equipment is built into the structure of the building. However, individuals who are responsible only for the maintenance of equipment which is housed in the building or structure but not related to the building's operation, would not be covered by this provision. Therefore, as your only factual representation is that these clinical engineers service and maintain medical equipment at a hospital, the Department will assume that they perform these duties only and do not perform work incidental to the building or structure in which they work. Accordingly, it is this Department's opinion that the clinical engineers described are not "engineers" of the type to whom Section 161(1) applies.

As your second question is prefaced with the phrase "if the answer to the above question is yes," no answer is required.

This opinion is based on the information provided in your letter dated February 10, 2009 and our subsequent telephone conversation. 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:da
cc: Carmine Ruberto