



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

December 4, 2008

[REDACTED]

Re: Request for Opinion
Manual Workers
RO-08-0061

Dear [REDACTED]

I have been asked to respond to your letter of May 22, 2008 asking for the Labor Laws specifically stating that hairdressers and pizzeria workers are "manual workers" who must be paid weekly and not bi-weekly. You also ask that our response indicate whether manual workers are entitled to be paid overtime on a weekly basis.

Labor Law §191(a)(i) mandates that all manual workers be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned. Whether an employee is a manual worker, which is defined by Labor Law §190(4) as a "mechanic, workingman or laborer," is determined by the duties performed by the worker, not by the job title assigned to such work. The New York State Department of Labor's longstanding interpretation of these statutes is that employees who spend more than 25 percent of their working time performing physical labor are "manual workers" who must be paid weekly. The Department interprets the term "physical labor" broadly to include a wide range of physical activities undertaken by employees too numerous to list in this letter. However, it is certain that the mere *description* of an employee as a hairdresser or pizzeria worker is not sufficient for a determination that such employee is a "manual worker." To make such a determination, this Department would need additional details of the duties and tasks performed by the employees in question and the approximate amount of time spent in each task or duty. While Counsel's Office is willing to express opinions as to whether the employees working in such categories could be considered "manual workers," please be advised that these opinions are advisory only and are not determinative.

Pizzeria workers are engaged primarily in the pizzeria business wherein pizzas are made and sold. Implicit in this work is the physical preparation, packaging, and clean up involved in the making and sale of pizzas and other food items. Activities in connection with this job could include lifting and carrying large bags of flour, heavy pitchers of water, and boxes filled with

Phone: (518) 457-4380 Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

tomatoes, sauce, cheese and other ingredients; cleaning and operating of dough mixing equipment; preparing dough for proofing and stacking and moving proofing racks; and cleaning of the prep area, pots and pans, and the food service area and floors at the end of the day. Employees who spend more than twenty-five percent of their working time in such activities would be manual workers. Hairdressers cut and style hair. However, the general job duties of a hairdresser, in addition to cutting, coloring, and styling hair could also involve washing hair, cleaning the hairdresser's own work stations, and cleaning wash sinks, equipment, and other shared work spaces in the salon. Since the cutting and styling of hair, along with any of these other tasks, necessarily involves physical labor, such employees would be considered manual workers.

If you wish to provide a detailed description of the duties performed by the hairdressers and pizzeria workers described in our letter to our office, we can provide you with a more definitive response.

In regard to your request that this letter reflect that manual workers are entitled to be paid their overtime wages on a weekly basis, please take note that the Department of Labor interprets Labor Law §191(a)(i), referenced above, to mean that manual workers must be paid *all* wages due and owing, including but not limited to overtime wages, on a weekly basis.

This opinion is based on the information provided in your letter of May 22, 2008. A different opinion might result if the circumstances outlined in your letter changed, 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 Shapiro
Associate Attorney

JGS:jc

cc: Carmine Ruberto