



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

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February 3, 2010

[REDACTED]

[REDACTED]

[REDACTED]

Re: Request for Opinion  
Section 195(1)  
Union Contracts  
RO-09-0159  
RO-09-0166  
RO-09-0175

Dear [REDACTED]:

This letter is written in response to your letters requesting an opinion as to the applicability of Section 195(1) of the Labor Law to union-represented employees. Since this letter is written in response to several requests for opinion which set forth different, albeit similar, factual circumstances, this response is intended to enunciate the Department's opinion as to the applicability of Section 195(1) to union-represented workers in situations where the worker's rate(s) of pay and/or designated pay day are contained in the provisions of a collective bargaining agreement.

Section 195(1) of the Labor Law, effective October 24, 2009, provides as follows:

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*Every employer shall:* (1) notify his or her employees, in writing, at the time of hiring of the rate of pay and of the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article, and obtain a written acknowledgement from each employee of receipt of this notice. Such acknowledgement shall conform to any requirements established by the commissioner with regard to content and form. For all employees who are eligible for overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law or regulation, the notice must state the regular hourly rate and overtime rate of pay. [emphasis added]

As you can see, Section 195(1) specifies that "every employer" must provide the required notice in writing. Nothing within that Section exempts employers of union-represented employees who work pursuant to a collective bargaining agreement. Since the provisions of Article 6 of the Labor Law have been interpreted by the Court of Appeals to apply to all employees not excluded from the coverage of that particular section (*See, Pachter v. Bernard Hodes Group, Inc.*, 10 N.Y.3d 609) please be advised that employers of union-represented employees are not exempt from the requirements in Section 195(1) of the Labor Law.

Since employers who are parties to a collective bargaining agreement are covered by the law, the remaining question is whether the inclusion of information regarding an employee's regular and overtime rates of pay in that collective bargaining agreement satisfies the notice requirements of Section 195(1). It is the opinion of the Department that such notice would not meet the statutory requirement. The intent of the Department is proposing the legislation creating this notice requirement was to ensure that individual employees understood what their own regular and overtime rate of pay would be. This information gives an employee the information he or she needs to verify that their paycheck is correct and to assert an entitlement to any regular or overtime pay due to them in the event of employer mistake or illegal failure to pay wages. Pay rate information contained in the collective bargaining agreement may cover certain groups of workers in various job titles, shifts, etc. and may generally discuss overtime payments, but the information it is not specific to any one individual worker; as such, it would not fulfill the legislative purpose behind Section 195's notice requirement. Moreover, the form and timing of notice was intended to put the information into the hands of the worker at the time of hiring and in an easily understandable form. Expecting a worker to read through or otherwise find this information in a lengthy collective bargaining agreement would not satisfy these purposes. Additionally, it is not clear that the collective bargaining agreement would be provided to all employees or provided at the time of hiring; in some circumstances it may not be available at all except upon request or may be provided to the worker after hiring with other job related information. Finally, acknowledgment of receipt of the information must be obtained from the employee at the time the notice is provided. Where the employee has not received the collective

bargaining agreement or has to review the agreement for the relevant information, such acknowledgment cannot be given to employers. For all of these reasons, we do not believe that the inclusion of wage and overtime information in the collective bargaining agreement meets the statutory notice requirement.

It is worth noting, however, that while the Department has promulgated guidelines and model forms for providing notice<sup>1</sup>, the Department has not required that employers use a particular form to satisfy the requirements under Section 195(1). Therefore, employers remain free to utilize the forms provided by the Department, or to develop their own forms or methods of providing written notice to the employee and obtaining a written acknowledgment, so long as such forms or methods satisfy the requirements of Section 195(1). For example, employers of union-represented employees may elect to provide employees with a copy of the pages from the collective bargaining agreement that contain the employee's regular and overtime rate of pay and designated pay day and obtain a written acknowledgement of receipt of such notice. However, it must be noted that merely citing to a collective bargaining agreement which governs the employment relationship does not satisfy the requirements of Section 195(1) since that Section requires that the notice be provided to the employees in writing. Furthermore, should an employer choose to rely on pages from a collective agreement, those pages must clearly enunciate the *employee's* rate of pay and the designated pay day for that particular employee.

It is also worth noting that this opinion is unchanged even if the union-represented employees in question were supplied to employers through union hiring halls on a short-term or as needed basis. The brevity of anticipated or actual employment in no way relieves the employer of its obligations under the law to comply with the requirements of Section 195(1) of the Labor Law.

In regard to a specific inquiry regarding the applicability of Section 195(1) to workers represented by the [REDACTED], please be advised that neither the comprehensiveness of a collective bargaining agreement nor the infrequency that new employees are permitted to become eligible to be hired relieves an employer of its responsibilities under Section 195(1). That Section requires, as emphasized above, that "every employer" provide employees with the written notice and obtain a written acknowledgment and, as such, the proposed exemption of the employees represented by the [REDACTED] would be contrary to the express language of that Section.

It was also suggested, with regard to the [REDACTED], that the time of hiring should be interpreted to take place at the time when the individual becomes eligible for dispatch and hiring, and that another entity, an association of employers, should be permitted to fulfill the obligations of its members on their behalf at that time. Please be advised that as an individual's becoming eligible for dispatch and hiring is not, by

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<sup>1</sup>Forms LS 50 through LS 59, which relate to Section 195(1) of the Labor Law, are available at the following webpage: <http://www.labor.state.ny.us/formsdocs/wp/ellsformsandpublications.shtm>

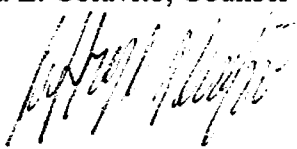
definition, the time of hiring, such an alternative would not satisfy the requirements of Section 195(1) of the Labor Law. However, while employers remain responsible for any violations that occur, nothing in Section 195(1) prohibits an employer from delegating its responsibilities under that Section to another entity to perform on their behalf at the actual time of hiring.

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:mp

cc: Carmine Ruberto