



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

January 19, 2010



Request for Opinion
Minimum Wage
Non-Profitmaking Institution
RO-09-0172

Dear [REDACTED],

This letter is written in response to your letter dated December 9, 2009, in which you request an opinion regarding the election and certification that non-profitmaking institutions can make pursuant to Labor Law §652(3) to pay employees not less than the statutory minimum wage in lieu of compliance with the State Minimum Wage Orders. You acknowledge that the language of Section 652(3)(b) of the Labor Law, in which the certification to pay the statutory minimum wage in lieu of compliance with the Minimum Wage Orders, does not appear to permit a late filing under the language of the statute. You ask whether a non-profitmaking institution's late filing of a certification extinguishes an employer's obligations under the Minimum Wage Orders retroactively, only as of the date of the filing of the certification, or not at all.

As you know, Labor Law §652(3) provides non-profitmaking institutions with the option of becoming exempt from the provisions and requirements of the State Minimum Wage Orders upon fulfilling one of two conditions: (1) the non-profitmaking institution certified to the Commissioner, on or before October 1, 1960, that it would pay not less than the minimum wage set forth in Section 652(1) to its employees; or (2) that, if it was not organized or did not hire employees prior to October 1, 1960, within six months after its organization or first employment of individuals within the coverage of the Minimum Wage Act, it gave the above described certification. No option is provided for non-profitmaking institutions that fail to satisfy either of the two conditions described above in the time period.

Since, as you note, nothing in that Section permits a late filing by a non-profitmaking institution, no late filing is permissible under the Statute. Accordingly, please be advised that a late filing is not permissible and would not be accepted by this Department. Accordingly, the

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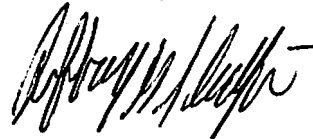
attempt to make such a late filing would not extinguish an employer's obligations under the Minimum Wage Orders.

This opinion is based on the information provided your letter dated December 9, 2009. A different opinion might result if the circumstances stated therein 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:

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro". The signature is written in a cursive style with a horizontal line at the end.

Jeffrey G. Shapiro
Associate Attorney

JGS: