



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



December 1, 2008



Re: Request for Opinion  
On Call Time  
RO-08-0127

Dear [REDACTED]:

This letter is written in response to yours received by the Department of Labor on October 8, 2008 in which you state that your employer is currently looking into forming a company that would offer technical support over the telephone through the use of individuals who work from home. Your letter asks whether it would be permissible to pay the individuals working from home "a few dollars an hour while they are home doing nothing," and then pay them thirty cents per minute while they are on a technical support call.

Generally, employers in New York may structure wages in any manner they see fit provided that such wages meet or exceed the minimum wage for all hours worked by the employee. In other words, your employer may pay employees a certain "base wage" and an additional amount per minute while they are on a technical support call provided that the total amount of money paid to the employees for all hours worked each week is equal to or greater than the minimum wage for all those hours.

It is also important for your employer to realize that, under certain circumstances, time spent by employees who are "at home doing nothing" will be considered working time that must be included in the calculation of hours worked each week. To completely answer your question, therefore, it is necessary to distinguish between "on call" and "subject to call" time as employees must be paid for all time spent "on call."

"On call" time is that time during which employees are required to remain at the prescribed workroom or workplace, awaiting the need for the immediate performance of their assigned duties. They are considered to be working during all the hours that they are confined to the workplace including those hours in which they do not actually perform their duties.

"Subject to call" time is that time in which employees are permitted to leave the work room or workplace between work assignments to engage in personal pursuits and activities. In some cases, they may be restricted to a specified area, to be reachable by telephone or otherwise,

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to report to the work assignments within 15 to 30 minutes, etc. In such cases, working time starts when they are actually ordered to a specific assignment or at the time in which they perform work for the employer.

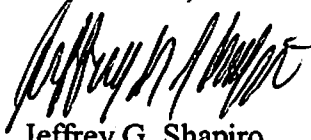
Your letter does not provide enough information to render a definitive determination as to whether the employees' activities would constitute "on call" or "subject to call" time since your letter does not indicate whether the individuals would be permitted to engage in personal pursuits or activities in any meaningful way. For example, your letter does not say whether the employees will have to wait by their home phone during their entire shift to answer all calls as soon as they come in, or whether they would be permitted to leave their home and take calls on cell phones. In the first example, all time spent on the shift would be considered on call time for which the employee must be paid, no matter how much time the employee actually spent dealing with customers, as the employee was not free to leave the "work area" to engage in any meaningful personal pursuits. In the second example, the employee would be considered subject to call and only that time actually spent in dealing with customers would be considered working time for which the employee must be paid.

Should you require a more definitive answer, please provide a more thorough description of the position, any and all the restrictions placed on the employee's activities while not taking calls, and whether or not the employee would be permitted to leave his or her home while awaiting calls.

This opinion is based on the information provided in your letter received by the Department of Labor on October 8, 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 G. Shapiro  
Associate Attorney

JGS:jc  
cc: Carmine Ruberto