



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

May 21, 2009



Re: Request for Opinion
Manual Workers
RO-09-0066

Dear [REDACTED],

This letter is written in response to yours of April 27, 2009 in which you request an interpretation of the term "manual workers" in New York Labor Law Section 190. Specifically, your letter requests an opinion as to whether the pre-analytical specialist, driver, and warehouse clerk positions described in your letter fit within the meaning of the term "manual workers" in Section 190(4). Please be advised that your letter does not provide enough information to render a definitive response to your request.

In general, to determine whether an employee is a "manual worker," as defined by Labor Law §190(4) to include "mechanic, workingman or laborer," the Department looks at the duties performed by the worker, not the job title or written description assigned to such work. It has been this Department's practice to make such a determination on a case-by-case basis by conducting a full investigation of the employee's actual duties by, among other things, conducting interviews with the employee in question. The Department then takes the data and applies it to the ordinary and usual meaning of the statutory terms and comes to a conclusion as to whether the employee fits within the definition of "manual worker." It has been this Department's longstanding interpretation of the term "manual workers" that the term includes employees who spend more than 25 percent of their working time performing physical labor. The Department interprets "physical labor" broadly to include a wide range of physical activities undertaken by employees too numerous to list in this letter.

While your letter acknowledges¹ that the warehouse clerk position likely fits within the definition of "manual worker," your letter states that you believe that the pre-analytical specialist and driver positions should not be deemed "manual workers." With regards to drivers, since the drivers are "often required to do light to medium lifting and carrying of objects that may weigh up to 30 pounds," such position may be considered to be within the meaning of "manual worker"

¹ Such an acknowledgement is undoubtedly reasonable based on your description of the position's duties which includes the unloading of trucks, sorting and placing materials on racks, shelves or bins, and assembling customer orders. These physical activities appear to make up the employee's primary duties and, therefore, are likely to constitute more than 25 percent of the employee's time.

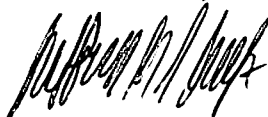
due to the "physical labor" performed by such drivers. Furthermore, previous opinions issued by this Department have stated that chauffeurs are within the meaning of the term "manual laborers." With regards to the pre-analytical analyst position, while nothing in your description of the position's duties appears to constitute physical or manual labor, such a determination, like that with drivers, is based solely on your description and is in no way definitive.

Accordingly, since no definitive determination as to whether such positions are within the term "manual worker" may be provided from a mere description of the position or duties performed, the above-contained paragraph is intended to inform you of the criteria used in making such a determination by the Department. As a cautionary measure, a prudent employer would pay any employees whose position *might* be considered to be within the meaning of "manual worker" not less than once a week since such frequency would satisfy the most stringent requirements prescribed by New York Labor Law Section 191. Should you require a definitive opinion whether the employees are considered to be manual workers, please provide the full name, address and tax identification number of the employer referred to in your letter, together with a list of all current employees holding the job titles in question. The Department of Labor's Division of Labor Standards will then conduct the full investigation necessary for such a response.

This opinion is based on the information provided in your letter of April 27, 2009. 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.

Very truly yours,

Maria L. Colavito, Counsel



By: Jeffrey G. Shapiro
Associate Attorney

cc: Carmine Ruberto