



New York State Department of Labor  
David A. Paterson, Governor  
Colleen C. Gardner, Commissioner

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May 12, 2010



Re: Request for Opinion  
Health Insurance Plans  
Nonsmoker Discounts  
RO-10-0055

Dear [REDACTED]:

This letter is in response to yours dated April 6, 2010 in which you request an opinion as to whether the New York Labor Law permits an employer's self-funded group health plan to offer discounted health insurance premiums to nonsmoking employees participating in the plan. As you point out, the most relevant provision in the Labor Law to your inquiry is Section 201-d. While this opinion is limited to the provisions of the New York State Labor Law, no other Section in the Labor Law, other than Section 201-d, deals with the permissibility of an employer's offering discounts for health insurance premiums for nonsmoking employees.

Section 201-d(2)(a) of the Labor Law prevents employers and employment agencies from discriminating against certain activities, including an "individual's legal use of consumable products prior to the beginning or after the conclusion of the employee's work hours, and off of the employer's premises and without the employer's equipment or other property." However, as you note in your letter, subsection 6 of Section 201-d states that "nothing in this section shall prohibit an organization or employer from offering, imposing or having in effect a health, disability or life insurance policy that makes distinctions between employees for the type of coverage or the price of coverage based upon the employees' recreational activities or use of consumable products..."

Accordingly, it is the opinion of this Department that the New York State Labor Law does not prohibit an employer from offering discounted health insurance premiums to nonsmoking employees participating in the employer's self-funded health plan.

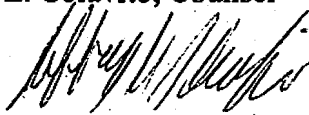
Tel: (518) 457-4380, Fax: (518) 485-1819  
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

I trust this to be responsive to your inquiry. 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:

cc: Carmine Ruberto