



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

November 3, 2010



Re: Request for Opinion
Call-in Pay
RO-10-0123

Dear [REDACTED]:

This letter is written in response to your letter dated July 12, 2010, in which you request an opinion regarding the call-in pay section of the Labor Law. You ask whether an employee can be scheduled for a shift of less than three hours if the employee receives advance notice of the scheduled shift, for example in the posting of a weekly schedule. Your letter specifically refers to a situation where an employer holds a staff meeting from 2:00 p.m. to 4:00 p.m. on the third Monday of every month.

In the first instance, please be aware that this letter should not be used to signify concurrence with any assertions made in your letter regarding questions allegedly asked and answered by the Division of Labor Standards. Rather, it is being sent solely in response to the request for an opinion contained in your most recent correspondence.

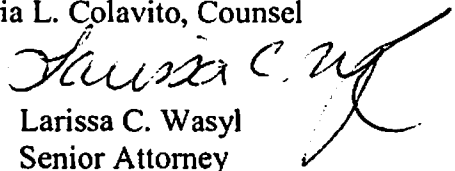
12 NYCRR 137-1.6 provides that "an employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum wage" 12 NYCRR § 137-1.6 entitles employees to a minimum payment for reporting to work "on any day" and is thereby based on a daily basis, rather than on a basis of the number of times an employee is requested or permitted to report to work for the day. The call-in pay requirements in 12 NYCRR § 137-1.6 are triggered when an employee reports for work for an additional period on a day in which the employee is provided work for a regularly scheduled shift that is less than four hours. That regulation entitles employees to a minimum payment for reporting to work "on any day" and is thereby based on a daily basis, rather than on a basis of the number of times an employee is requested or permitted to report to work for the day.

The term “regularly scheduled shift” is not defined by the New York State Labor Law or the regulations promulgated thereunder. In interpreting that term, the Department of Labor looks to its plain meaning. *See*, McKinney’s Statutes § 95. The plain meaning of the term requires **regularity** and thereby excludes special staff meetings and other infrequently occurring events which require the employee to report for work at a time different than in a normal workday. Accordingly, in determining whether a meeting is part of a “regularly scheduled shift,” the Department of Labor looks at the following factors: (1) the frequency of the meeting’s occurrence; (2) the regularity of the meeting’s occurrence; (3) the employee’s ability to anticipate the meeting’s occurrence; and (4) whether the employees in attendance would consider the meeting outside of their regularly scheduled work hours.

Applying this interpretation to the example provided in your letter, a regular *monthly* staff meeting is not likely to be considered within the definition of the term “regularly scheduled shift” because such meeting only occurs once a month and would, therefore, fall outside of the meaning of the term “regularly scheduled shift.” A prescheduled *weekly* staff meeting, on the other hand, is likely to fall within the meaning of the term “regularly scheduled shift” based on its frequency. As a general matter, the Department of Labor will consider a regular meeting that occurs less frequently than once per pay period to fall outside of the meaning of the term “regularly scheduled shift.” Moreover, your correspondence indicates that several of your employees work short work shifts involving different work days in order to accommodate circumstances such as physical therapy appointments. For such employees, it is unlikely that they would consider these meetings to be part of their regularly scheduled work hours. For the foregoing reasons, employees who must attend such meetings outside their regularly scheduled work hours would be entitled to call in pay for days on which they must attend such meetings. As a reminder, particularly for employees working short shifts, the amount of such call-in pay must be at least equal to the lesser of the number of hours of the employees’ regularly scheduled shift at the minimum wage rate or the four hours at that rate.

This determination is based exclusively on the facts and circumstances described in your letter dated July 12, 2010, and is given based on your representation, express or implied that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letters and email might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein or in connection with any matters involving a pending investigation by this Department. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By: 
Larissa C. Wasyl
Senior Attorney

CC: Carmine Ruberto