



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

March 18, 2010



Re: Request for Opinion
Maximum Work Hours
Overtime
RO-09-0187

Dear [REDACTED]:

This letter is written in response to your letter dated December 22, 2009 in which you request an opinion relating to the number of hours an employee can be required to work, and the New York State overtime pay requirements.

Your letter requests confirmation that there are no restrictions in the New York Labor Law upon the number of hours an employee can be required to work. Nothing in the New York State Labor Law restricts the number of hours most employees may work, subject, as you note, to the overtime, spread of hours, rest period, and day of rest requirements of the law. However, please be advised that Section 220(2) of the Labor Law, which applies to work on public work projects, provides, in relevant part, that "no laborer, worker or mechanic * * * shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property."

Your letter next requests confirmation that daily overtime pay is not required for hours worked in excess of eight hours per workday. The New York State overtime pay requirements of the regulations promulgated pursuant to Article 19 of the Labor Law do not require the payment of overtime for hours worked in excess of eight per workday, but rather in excess of forty hours per workweek. (e.g., 12 NYCRR §142-2.2.) However, please be advised that that subdivision two of Section 220 of the Labor Law requires the payment of overtime premium pay for all hours in excess of eight in a workday.

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It is worth noting that Article 4 of the Labor Law contains restrictions on the number of hours minors may work daily and weekly.

It is also worth noting that your letter states that the term "employee" as used in Section 160 of the Labor Law is limited to the definition of "employee" in Section 2(5) of the Labor Law, which defines it as "mechanic, working man, or laborer working for another for hire." Please be advised that when interpreting the term "employee" throughout the Labor Law, it is necessary to look not only to the definition contained in Section 2(5), but also to any surrounding definitions which may broaden or alter that definition, or any other legislative or judicial guidance that may be used in its construction. Furthermore, courts have consistently held that the provisions within the Labor Law should be construed towards conferring the maximum benefit to the employee in line with the remedial purposes of the Labor Law. (e.g., *Settlement Home Care v. Industrial Bd. of Appeals of Dep't of Labor*, 151 A.D.2d 580, 581 (2d Dep't 1989)], cited by *Matter of New York State Rest. Assn., Inc. v. Commissioner of Labor*, 45 A.D.3d 1133, 1135 (3d Dep't 2007); *In Re Ira Holm, et. al*, PR-08-0025 (Industrial Board of Appeals, 2008).) Accordingly, your characterization of the definition of "employee" for the purposes of Section 160 of the Labor Law as being "limited" is not accurate or in keeping with the spirit and purpose of the Labor Law.

This opinion is based on the facts set forth in your letter dated December 22, 2009. A different opinion might result if the circumstances outlined in your letter 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:



Jeffrey G. Shapiro
Associate Attorney

JGS:mp