



New York State Department of Labor

Eliot Spitzer, Governor

M. Patricia Smith, Commissioner

July 27, 2007



Re: Request for Opinion
Labor Law §191 - Timely Payment of Wages
File No. RO-07-0080

Dear [REDACTED]:

I have been asked to respond to your letter of July 20, 2007¹ in which you state that you represent [REDACTED] and ask for this Department's opinion regarding your client's proposal to initiate a Debit Card Program (Program) by which new employees will be given the option of being paid either through direct deposit or through an account created for them by [REDACTED] and its agent, [REDACTED]. The employee could access such wages either through an ATM withdrawal, a postal money order, point of sale machines at retail locations, by transfer of funds to another bank account or by a check drawn on such account. While the first transaction of each week would be without charge, all subsequent transactions would incur charges of up to \$1.75.

Enclosed for your consideration please find a copy of an opinion letter issued directly to [REDACTED] management on November 13, 2002, regarding what appears to be a substantially similar program. Your letter contains no information that would cause this Department to alter its previously-issued opinion that requiring employees to pay a fee to access their wages would constitute a violation of Labor Law §191.

This Department disagrees with your statement that this proposed Program "is particularly beneficial to those employees who do not maintain traditional checking accounts." While it is true, as you state, that such an employee could possibly spend an entire week's pay in one transaction, thereby avoiding any charges, the failure (or lack of desire) to do so would result in payment of fees on all subsequent transactions, regardless of the method by which the employee attempted to access his/her remaining wages.

¹ Please revise your files to reflect the fact that the New York State Department of Labor Counsel's Office no longer maintains an office at the address to which you addressed your request.

Therefore, this Department continues to be of the opinion, expressed in the enclosed prior opinion letter, that requiring an employee to pay such fees to access his/her wages constitutes a violation of Labor Law §191.

Please take further note that since the 2002 opinion letter was issued, the Court of Appeals has held that charging employees a fee to access their wages is a violation of Labor Law §193 under certain circumstances that may be applicable to this Program (*see Angello v. Labor Ready, Inc.*, 7 N.Y.3d 579 (2006)).

This opinion is based on the information provided in your letter of July 20, 2007. A different opinion might result 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
Senior Attorney

JGS:da
enclosure.
cc: Carmine Ruberto