



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

October 21, 2008



Re: Request for Opinion
Frequency of Pay - Overtime
RO-08-0094

Dear [REDACTED]

I have been asked to respond to your letter of July 23, 2008 in which you state that your company intends to change its payroll from a bi-weekly to a semi-monthly schedule. Your letter correctly states that, other than ensuring employee notification in advance of the change, no additional requirements are imposed on employers changing their payroll schedule by the New York State Labor Law provided that the amended schedule meets the requirements of the New York State Labor Law. Payment of wages on a semi-monthly basis is permissible for all employees other than manual workers and railroad workers under the New York State Labor Law. Although your letter does not indicate that you employ manual or railroad workers, please be advised that manual workers must be paid weekly and not later than seven calendar days after the end of the week in which the wages were earned, and railroad workers must be paid on or before Thursday of each week that wages are earned during the seven-day period ending Tuesday of the preceding week. (See, Labor Law §191(a)-(b)).

Your letter further states that you intend to continue calculating overtime earned based on your established workweek of Sunday through Saturday in the next payroll that is processed immediately following the close of that week. It is the Department of Labor's interpretation of Labor Law §191 that all wages, including overtime pay, are earned immediately upon the employee's rendering of services and the payment of such wages is required, at the latest, in the next pay period after they are earned. Accordingly, the proposed payroll plan you describe complies with the requirements of Labor Law §191 if, in addition to the circumstances described in your letter, employees are paid for overtime wages by the pay period immediately following the period in which they are earned.

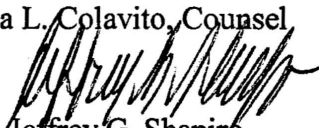
This opinion is based on the information provided in your letter of July 23, 2008. A different opinion might result if the circumstances outlined in your letter changed, if the facts

Tel: (518) 457-6526, Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

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:jc

cc: Carmine Ruberto