



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

March 5, 2009

[REDACTED]

Re: Request for Opinion
Tips
RO-08-0062

Dear [REDACTED]:

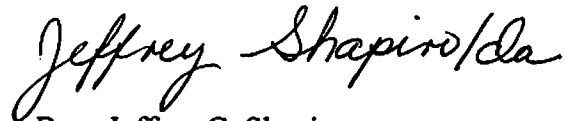
I have been asked to respond to your letter of May 20, 2008. Please accept my apology for the late response to your request. Your letter asks whether an employer may deduct monies from the gratuities portion of an employee's paycheck to cover the employee's portion of his/her health insurance benefits premiums, where that employee has signed an authorization that such sums may be deducted from his/her "wages," and the employee's "wages" are insufficient to cover the applicable costs.

Labor Law §193 prohibits employers from making deductions from "wages" except where it is expressly authorized in writing by the employee and for the benefit of the employee, including payments for insurance premiums. However, gratuities are not considered to be wages under Article 6 of the Labor Law, and are therefore not subject to the provisions contained in Section 193 of the Labor Law. (See, Labor Law §190(1).) However, gratuities are subject to the provisions of Labor Law §196-d, which provides, in part, that "[n]o employer...shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee." Accordingly, employers may not deduct monies from the gratuities portion of an employee's paycheck for the payment of the employee's portion of an insurance premium since Section 196-d expressly forbids employers from making such a deduction. Employees may, however, make payments directly to the employer to cover the balance in premium.

This opinion is based on the information provided in your letter of May 20, 2008. A different opinion might result if the circumstances outlined in your letter changed, 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

A handwritten signature in black ink that reads "Jeffrey Shapiro/da". The signature is written in a cursive, flowing style.

By: Jeffrey G. Shapiro
Associate Attorney

JGS:da

cc: Carmine Ruberto