



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

Via Fax and Mail (518) 463-6726

November 14, 2008



Re: Request for Opinion
Manual Labor
RO-08-0056

Dear [REDACTED]:

I have been asked to respond to your letter of May 9, 2008. Your letter asks whether the following positions are considered manual labor: hair dresser and salon employees, liquor store, basic retail, plumber, carpenter, flooring installations, flooring sales, landscaping, clerical, estheticians, property management company, inside sales, and outside sales.

Section 190(4) of the Labor Law defines a "manual worker" as "a mechanic, workingman or laborer." It has been this Department's practice to determine on a case-by-case basis whether an employee is a "mechanic, workingman or laborer" by conducting a full investigation of the employee's actual, as opposed to described, duties by, among other things, conducting interviews with the employee in question. The Department then takes the data and applies it to the ordinary and usual meaning of the statutory terms. Naturally, a determination of an employee's actual duties cannot be derived merely by reading a job description, much less a job title.

Accordingly, your letter does not provide enough information to make such a determination. Should you require a definitive opinion whether the employees are considered to be manual workers, please provide the full name, address and tax identification number of the employers referred to in your letter, together with a list of all current employees holding the job titles in question. The Department of Labor's Division of Labor Standards will then conduct the full investigation necessary for such a response.

Thank you for your consideration in this matter. If you have any questions, please feel free to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: Jeffrey G. Shapiro
Associate Attorney

JGS:jc
cc: Carmine Ruberto