



New York State Department of Labor
Elliot Spitzer, Governor
M. Patricia Smith, Commissioner

July 13, 2007

[REDACTED]

Re: Request for Opinion
Definition - Independent Contractor
File No.: RO-07-0076

Dear [REDACTED]:

I have been asked to respond to your undated letter regarding the claim made by [REDACTED] to the Division of Labor Standards (Division). Please be advised that this office was first provided a copy of this letter by the Division on July 10, 2007. This office has not yet received the letter you mailed directly to us, as such letter was not properly addressed. Please note that this office's correct address is set forth at the bottom of this page.

Your letter states your belief that [REDACTED] was an independent contractor, not an employee, and alleges various grounds for that belief. Based on this, you ask this office to make a decision regarding [REDACTED] employment status. Unfortunately, such a decision may not be made at this time.

On April 26, 2007, the Division received [REDACTED] Claim for Unpaid Wages alleging that she was your employee from October 28, 2004 through May 24, 2006 and that she was not paid \$29,500.00 in wages/commissions due and owing to her. On May 8, 2007, the Division sent you a letter advising that this claim had been made and asking, if such claim is correct, that you forward payment to the Commissioner of Labor or, if you do not agree with the claim, to set forth a statement giving your reasons for disagreement. Presumably, your undated letter to this office was a statement of such reasons.

At present, therefore, there has been no investigation of this matter. [REDACTED] has made various allegations to the Division that, if true, would provide a basis for a finding that she was your employee. You have made various allegations that, if true, would provide a basis for a finding that [REDACTED] was an independent contractor. However, as no investigation has yet been performed, there is no way for the Division, or this office, to make a determination as to which, if any, of the allegations made by [REDACTED] and you are true and which, if true, should be determinative.

Therefore, the Division's investigation of this matter must continue pursuant to its regular and usual procedure. Only after completion of such investigation may the Division make a determination as to [REDACTED] employment status.

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This opinion is based on the information provided in your undated letter received by this office on July 10, 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:
cc: Carmine Ruberto