



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

March 26, 2008



Re: Request for Opinion
Labor Law §161 - Day of Rest
File No.: RO-08-0016

Dear [REDACTED]

This letter is written in response to yours of February 11, 2008 in which you ask whether the provisions of Labor Law §161, may be waived by an employee who has been informed of such provisions but elects to work seven consecutive days, regardless. Please be advised that your question first appears to reflect a misunderstanding of the relevant law. Furthermore, a waiver of such provisions may not be made under the facts provided.

Contrary to your apparent representation, Labor Law §161 does not prohibit the employment of a person for seven or more consecutive days without a day of rest. Labor Law §161(1) states that persons in various classes of employment must be provided "at least twenty-four consecutive hours of rest in any calendar week." This language does not mean that an employee must be provided with a day of rest every seven days, but, as stated, that he/she must be provided with at least one day of rest in each "calendar week." The Department of Labor interprets the term "calendar week" to have its ordinary and usual meaning, to wit: the period from Sunday to Saturday. Therefore, to chose examples from this month's calendar, an employer who gives an employee a day of rest on Sunday, March 2, 2008, a second day of rest on Saturday, March 15, 2008, a third day of rest on Tuesday, March 18, 2008 and a fourth day of rest on Friday, March 28, 2008 will have fulfilled the requirements of Labor Law §161(1) as the employee will have been given a day of rest in each calendar week of March, 2008.

Please be further advised that there is no provision in statute or case law for an employee's waiver of the requirement of a day of rest based only upon being advised of the requirements of Labor Law §161. However, Labor Law §161(5) sets forth the means by which an employer may be granted a variance of this requirement in cases of practical difficulty or unnecessary hardship.

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This opinion is based upon the information provided in your letter of February 11, 1008.
A different opinion might result if any facts provided have been inaccurately stated, or if there
are other relevant facts that have not been provided.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro", is written over the typed name.

Jeffrey G. Shapiro
Senior Attorney

JGS:jc