



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

August 13, 2009



Re: Request for Opinion
Labor Law §206-c
RO-09-0039

Dear [REDACTED]

I am writing in reply to your facsimile of March 10, 2009, in which you request an opinion as to how your client can comply with NYS Labor Law §206-c given certain staff and funding limitations faced by your client. You state that you are a human resources consultant inquiring on your client's behalf. You indicate that one of your clients runs group homes for persons with disabilities and is unable to guarantee that its employees will not be interrupted, or fully relieved of duty, during breaks for the expression of breast milk during second and third shifts, as there is often only one person on-site. However, the employees will be provided with a private, sanitary place for this purpose. You further indicate that this time would be paid time.

NYS Labor Law §206-c provides in relevant part that an "employer shall provide reasonable unpaid break time or permit an employee to use paid break time or meal time each day to allow an employee to express breast milk." The Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place, a copy of which is enclosed, specifies that reasonable unpaid break time is "sufficient time to allow the employee to express breast milk" and that "each break shall generally be no less than twenty minutes." If the room or location provided for this purpose is not in close proximity to the employee's work station the break "shall generally be no less than thirty minutes." The employee may be required to postpone break time for no more than thirty minutes if she cannot be spared from her duties.

With regard to the instant inquiry, a subsequent telephone conversation with you on August 4, 2009 revealed that the individuals would typically be working on their own during the shift running from 11pm to 7am and would only be interrupted by their official duties should an individual at the group home need attention. The frequency and duration of these interruptions could vary from night to night and could not be anticipated with any certainty by the employer. Moreover, time during this shift which is not spent responding to the conditions which gave rise to the interruption would essentially be the employee's time, that is, the employee would not otherwise be engaged in activities for the employer during the remainder of the shift but would simply have to be available to respond to the residents' needs. Therefore, when the cause of the interruption has been addressed, the employee would be able to resume the expression of breast

milk. Finally, you have indicated that time spent by the employee expressing breast milk would be considered paid time by her employer, a benefit not required by law.

Under this particular set of circumstances, it is the Department's opinion that the employee is being provided with reasonable opportunities to express breast milk during her shift and the employer would not be required to retain additional staff in order to guarantee that each break for the expression of breast milk would be uninterrupted..

This opinion is based on the information provided in your facsimile dated March 12, 2009. A different opinion might result if the circumstances outlined in your letter change, 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

Jeffrey Shapiro
Associate Attorney

cc: Carmine Ruberto
Enclosure