



**New York State Department of Labor**

**David A. Paterson, Governor**

**M. Patricia Smith, Commissioner**

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September 11, 2009

[REDACTED]

Re: Public Work Hours of Employment/Overtime  
Our File No. RO-09-0051

Dear [REDACTED]:

You ask our opinion as to whether work performed by an employee whose shift begins at 7:00 PM and extends to 9:00 AM the next day would require the payment of overtime hours for six hours of the fourteen hour shift. You point out that the statute says that no worker shall be permitted to work more than eight hours in *one calendar day*. You therefore take the position that since the calendar day changes at mid night, such a worker would have worked five hours in one calendar day and nine hours in the next calendar day, resulting in one hour of overtime work due.

The Bureau of Public Work takes the position that an employees "day" starts at the time that the worker's shift begins, and encompasses the twenty four hours after the commencement of the shift. This is particularly the case when such overnight work is required by the terms of a contract, as is the case with many DOT contracts involving road construction. The use of a calendar day in such a situation would defeat the intended purpose of the prevailing wage law, which is to limit a worker's hours to a maximum of eight hour shifts. This is especially true where the municipal entity requires that the work being performed take place as night work.

In this regard, two other factors should be considered. First, any work over eight continuous hours would require that the employer seek and obtain a dispensation from the Bureau of Public Work based upon the considerations set forth in Section 220 (2) of the Labor Law. Such dispensation is granted when it is demonstrated that insufficient workers are available and that completion of the work without undue delay is necessary health and safety of the public and the workers. Such a dispensation should include direction as to the payment of overtime in the circumstances.

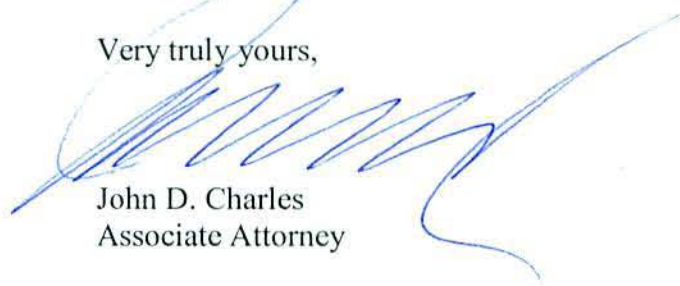
Second, eight hours is not necessarily the point at which overtime is required. Many collective bargaining agreements contain provisions that require the payment of overtime after seven hours of work, and if that is contained in such agreement and made part of the prevailing

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wage schedule, then overtime would have to be paid for those hours in excess of seven hours, or, in the example you provide, seven hours of overtime.

This opinion is specific to the facts described in the documents provided and, were those facts to vary from those set forth in the documents, or if additional facts and circumstances exist of which we are not currently aware, this opinion could be changed accordingly. I trust that this is responsive to your inquiry. Please let us know if you need any further clarification on this issue.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John D. Charles", with a long, sweeping flourish extending to the right.

John D. Charles  
Associate Attorney

Cc: Chris Alund  
Pico Ben Amotz  
David Bouchard  
Fred Kelley  
Opinion File