



New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

October 23, 2008

Re: Request for Opinion
Overtime Exemption
RO-08-0120

Dear [REDACTED]:

This letter is written in response to your request for an opinion received by this Department on September 16, 2008. Your letter states that you are a NYS registered nurse working for a private homecare agency in Smithtown, New York. Your letter states that you have worked for two of the agency's clients, in their homes, for a total of 54.5 hours per week. Your question asks whether you are entitled to overtime pay after forty hours of work per week or whether you are exempt from the overtime provisions of the federal and state labor laws.

Please be advised that it is not appropriate for this Department to provide interpretations of federal law as we have no jurisdiction over such law. I suggest you direct any questions regarding federal law to the United States Department of Labor, Wage and Hour Division. You can consult your local phonebook to find the office of the USDOL nearest your home or office or you may go to the USDOL website, www.dol.gov for further information in this regard.

New York State Regulation 12 NYCRR §142-2.2 states that "employees" in the State of New York must be paid overtime wages for all hours worked in excess of 40 per week. However, Regulation 12 NYCRR §142-2.14(c)(4)(iii) exempts from the definition of the term "employee," for the purposes of these regulations, persons employed in a "bona fide professional capacity." This regulation defines such persons, in relevant part, as those "whose primary duty consists of the performance of work: requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship..."

There can be no doubt that a registered nurse meets the definition of a person in a "bona fide professional capacity." Accordingly, such a person is not an "employee" for the purposes of 12 NYCRR §142-2.2. Therefore, the employer of a registered nurse is not required by New York State Labor Law to pay wages at the overtime rate to that person no matter how many hours he or she works in a given workweek.

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This opinion is based on the information provided in your letter received by this Department on September 16, 2008. A different opinion might result if the circumstances outlined in your letter changed, 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
Associate Attorney

JGS:jc

cc: Carmine Ruberto