



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

July 6, 2007



Re: Request for Opinion
Supplemental Benefits - Labor Law §198-c
File No.: RO-07-0067

Dear [REDACTED]:

I have been asked to respond to your letter dated May 14, 2007 and received by this office on July 2, 2007, in which you state that you represent a not-for-profit religious organization having an employee with a terminal illness. Several other employees have offered to donate their sick time to this employee. You state that you perceive several potential conflicts, however, with this procedure, to wit: payment of taxes; allocation of sick time donated by employees with disparate salaries; and issues of discrimination arising from permitting donations to employees with certain illnesses, but not others. You ask for a written opinion regarding this matter.

In general terms, there is no New York statute, regulation, or case law requiring employers to provide sick time to employees, to allocate such sick time in any particular manner, or to prohibit the donation of one employee's sick time to another. The only relevant statute on this issue is New York State Labor Law §198-c, which provides that an employer who is a party to an agreement to pay or provide benefits or wage supplements (which would include sick time) to an employee, but who fails, neglects or refuses to abide by such agreement, is guilty of a misdemeanor. It is well settled that, "All that is required by section 198-c is that an employer abide by the terms of his agreement to provide benefits," (*Glenville Gage Co., Inc. v. Industrial Board of Appeals*, 70 AD2d 283, 286 (3rd Dept. 1979), *aff'd* 52 NY2d 777 (1980)).


Accordingly, there is no bar in the New York State Labor Law to your client permitting sick leave donations from one employee to another, nor from crafting a solution to the problem of donations from employees with disparate salaries, provided that such solution does not constitute a violation of the Labor Law, including but not limited to the requirements that employees be timely paid (*see* Labor Law §191) and with no unlawful deductions made from

Please be advised that the Department of Labor is not competent to offer an opinion on the potential tax liability to which such a policy might expose your client. Accordingly, I suggest that you contact both the State's Department of Taxation and Finance and the federal Department of Internal Revenue for such an opinion. Please be further advised that New York State's laws regarding employment discrimination are set forth in the State's Human Rights Law (New York State Executive Law Article 15), which laws are enforced by the State's Division of Human Rights. I suggest that you contact that agency for an opinion on this issue.

This opinion is based upon the information provided in your letter of May 14, 2007. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts which have not been disclosed.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in black ink, appearing to read 'Jeffrey G. Shapiro', written over the printed name.

By: Jeffrey G. Shapiro
Senior Attorney

cc: Carmine Ruberto

JGS: