



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

August 14, 2008

[REDACTED]

Re: Request for Opinion
Fingerprinting
RO-08-0029

Dear [REDACTED]:

I have been asked to respond to your letter of March 6, 2008. Please accept my apology for the late response to your request. Your letter states that you represent an employer with offices in New York State that is considering presenting employees the option, on a voluntary basis, of using "finger scanning" to clock in and clock out for a shift. While your letter acknowledges a previously issued opinion by this Department stating that the system your client is proposing to install is within the definition of "fingerprinting" (See, June 6, 2006 Department of Labor Opinion (RO-06-0046)), your letter asks whether the use of such a system on an entirely voluntary and optional basis is permissible under the Labor Law.

Labor Law §201-a prohibits employers from requiring their employees to be fingerprinted as a condition of securing or continuing employment. However, Section 201-a does not prohibit the fingerprinting of employees on an entirely voluntary basis. Accordingly, the program you describe in your letter would not be in violation of the Labor Law. Your letter states that employees who opt not to utilize a finger scan will be required to carry a "Kronos Badge" to clock in and clock out for a shift. Please be advised that in the event any employee makes a complaint that carriers of a "Kronos Badge" are discriminated against in any manner, the Department will strictly scrutinize the circumstances of all allegedly voluntary fingerprintings.

This opinion is based on the information provided in your letter of March 6, 2008. A different opinion might result 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