



New York State Department of Labor

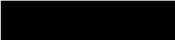
David A. Paterson, *Governor*

M. Patricia Smith, *Commissioner*

August 26, 2008



Re: Request for Opinion
Fingerprints/Wage Deduction
RO-08-0091

Dear 

I have been asked to respond to your letter of July 18, 2008. Your letter states that you work as a salaried computer professional for a mid-sized hospital corporation which recently instituted a policy requiring employees to “punch in” using a finger-reader time clock. You were informed by your supervisor that anyone who comes in late or leaves early will have the cost of the time not worked deducted from their earned vacation time to pay for it, in lieu of it coming from salary. Please accept the following in response to your letter.

Labor Law §198-c provides that an employer who is a party to an agreement to pay or provide benefits or wage supplements (which would include time off) to an employee, but who fails, neglects or refuses to abide by such agreement is guilty of a misdemeanor. It is well settled that “[a]ll 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 A.D.2d 283, 286 (3rd Dept. 1979), *aff’d* 52 N.Y.2d 777 (1980).) Any actions that conflict with the agreement to pay vacation time as described in an employee manual are in violation of Section 198-c.

Furthermore, Labor Law §193 provides that wage deductions, including deductions from benefits or wage supplements, must be authorized in writing by the employee and be either a deduction for one of the purposes specifically authorized or “similar” to one of those specifically authorized. (See, Labor Law §193; See also, Marsh v. Prudential Securities, Inc., 1 NY3d 146 (2003); Matter of Angello v. Labor Ready, Inc., 7 NY3d 579 (2006)). Currently there is no provision of any law or any rule or regulation issued by any governmental agency authorizing wage deductions for employees arriving late or leaving early from work, nor is such a deduction similar to one of those specifically authorized. However, your letter fails to provide enough information as to when the vacation time is “earned” under the terms of the employment agreement. Accordingly, more information is needed to determine whether such a deduction is in violation of either Labor Law §193 or §198-c.

Tel: (518) 457-4380, Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

It is also worth pointing out that your employer may be in violation of the Labor Law for its use of fingerprinting for time-keeping purposes. New York State Labor Law Section 201-a states, in full:

Fingerprinting of employees prohibited. Except as otherwise provided by law, no person, as a condition of securing employment or of continuing employment, shall be required to be fingerprinted. This provision shall not apply to employees of the state or any municipal subdivisions or departments thereof, or to the employees of legally incorporated hospitals, supported in whole or in part by public funds or private endowment, or to the employees of medical colleges affiliated with such hospitals or to employees of private proprietary hospitals.

Unfortunately, the information provided in your letter is insufficient to render a determination as to whether the hospital for which you are employed is “a legally incorporated hospital, supported in whole or in part by public funds or private endowment...or [a] private proprietary hospital.” Furthermore, your letter does not provide sufficient information to determine whether the “finger-reader” actually reads fingerprints or merely uses finger geometry.

This opinion is based on the information provided in your letter of July 18, 2008. A different opinion might result if the facts provided were not accurate, or if any other relevant fact was not provided.

I trust the above to be responsive to your request. Should you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: Jeffrey G. Shapiro
Associate Attorney

JGS:jc
cc: Carmine Ruberto