



New York State Department of Labor  
Andrew M. Cuomo, Governor  
Colleen C. Gardner, Commissioner

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February 15, 2011

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Request for Opinion  
Lost Paychecks  
RO-10-0093

Dear Ms. [REDACTED]:

This letter is written in response to your letter dated June 16, 2010. Your letter states that you operate a small payroll service company in central New York that mails one of its client's employees' paychecks directly to their homes. In relation to this practice, your letter asks two questions, which are addressed individually below.

Your first question asks whether employers are required to issue employees a new paycheck if the post office fails to deliver a mailed paycheck in the time frame required by the Labor Law. Section 191 of the Labor Law requires the timely payment in full of an employee's agreed upon wages and sets forth the frequency of such payments for particular categories of employees. For example, manual workers must be paid weekly and not later than seven days after the end of the week in which their wages are earned (Labor Law §191(1)(a)(i)), while clerical and other workers must be paid in accordance with the agreed-upon terms of employment, but not less than semi-monthly, on regular pay days designated by the employer. (Labor Law §191(1)(d).) While the practice of mailing an employee his or her paycheck may satisfy an employer's obligations under Section 191 of the Labor Law, an employer will have violated that Section should the paycheck fail to reach the employee on or before the date required (emphasis added). Accordingly, in order to avoid violation of Section 191 of the Labor Law, the employer in question would be required to issue, without charge to the employee, a new paycheck if the previously mailed check was not delivered to the employee by the time required by Section 191 of the Labor Law.

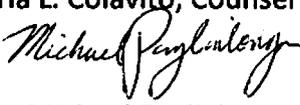
Your second question asks whether employees may be required to pay the stop payment fee imposed by the bank upon which the paycheck was issued if the employee, "through their own negligence, not the fault of the employer," lost the paycheck after it was

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delivered to him or her. Employers are prohibited by Sections 191 and 193 of the Labor Law from charging an employee through wage deduction for any fees incurred for stopping payment on a check, regardless of the circumstances under which the check was lost.

This opinion is based exclusively on the facts and circumstances described in your email of June 16, 2010, and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,  
Maria L. Colavito, Counsel  
By:   
Michael Paglialonga  
Assistant Attorney II

cc: Carmine Ruberto