



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

VIA FAX AND MAIL
[REDACTED]

February 19, 2009

[REDACTED]

Re: Request for Opinion
Route Sales Drivers
RO-08-0162

Dear [REDACTED]:

This letter is written in response to your letter dated December 22, 2008 in which you request information pertaining to route sales drivers and overtime pay for time worked in excess of 40 hours per workweek. Unfortunately, your letter does not provide enough information to provide a definitive answer to the two questions posed in your letter.

Your letter first asks about the current law for overtime compensation for Route Sales Drivers. New York State Regulation 12 NYCRR §142-2.2 states that employees in New York State who work more than 40 hours per week must be paid overtime at one and one half times their regular rate of pay unless they fall into one of the exceptions listed in the Fair Labor Standards Act (FLSA). If the employee falls into one of the listed exemptions, the employee must be paid overtime at a rate not less than one and one half times the state minimum wage (currently \$7.15/hour).

An exception to the overtime requirements of the FLSA is the "motor carrier exception," which excludes employees subject to regulation by the U.S. Department of Transportation. (See, 29 USC §213(b)(1).) The requirements for the exception are outlined in Federal Regulation at 29 CFR 782.2 and FLSA Fact Sheet #19 which provide that the applicability of the motor carrier exception to an employee depends on both the class to which his or her employer belongs, the employee's duties, and the type of vehicle used by the employee. Additionally, it is worth noting that the route sales drivers you write about may fall under the outside and/or commission sales exemptions of the FLSA. (See, 29 USC 213(a)(1); FLSA Fact Sheet # 17f.) Unfortunately, your

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letter does not provide enough information to determine whether the route sales drivers in question fall within these, or any other, exception of the FLSA. If you wish to contact us with this additional information, we will be happy to provide you with a more complete response to your question.

Your letter also asks how overtime is paid to Route Sales Drivers who cross interstate lines within U.S. Boundaries, but not necessarily in New York. Unfortunately, since a response to this portion of your letter would require an interpretation of laws other than the New York Labor Law, it would be inappropriate for the New York State Department of Labor to render an opinion in response to this portion of your inquiry. Please do not hesitate to contact the United States Department of Labor for more information regarding this portion of your inquiry.

This opinion is based on the information provided in your letter dated December 22, 2008. A different opinion might result if the circumstances outlined in your letter change, if the facts provided were not accurate, or if any other relevant fact was not provided. If 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:da

cc: Carmine Ruberto