

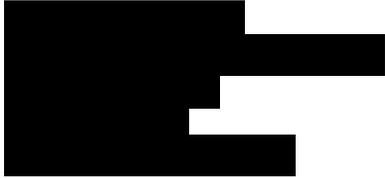


New York State Department of Labor

David A. Paterson, *Governor*

M. Patricia Smith, *Commissioner*

July 29, 2008



Re: Request for Opinion
FLSA - Maximum Hours
R0-08-077

Dear [REDACTED]:

I have been asked to respond to your letter of June 24, 2008 in which you request an opinion regarding your company's proposed "9/80" work schedule. You describe such schedule as one in which employees would work nine hours per day every Monday through Thursday, and eight hours every other Friday. Under such a schedule the employees would work alternating 36 and 44 hour workweeks. Although you do not state a specific question in your letter, you are presumably asking if your company must pay employees for four hours of overtime in each alternating week. The answer is that such an overtime payment is not required by law if the above-described work schedule was agreed upon in collective bargaining.

New York State Labor Law §142-2.2 states that employees must be paid overtime wages of one and one-half times their regular rate of pay "in the manner and methods provided in . . . the Fair Labor Standards Act" (FLSA). Although the FLSA states that employees must receive overtime wages for all hours worked over 40 in any workweek (29 USC §207(a)(1)), it also provides various exceptions to that rule, one of which is that an employer will not be in violation of the overtime rules if: (a) the employee is working in accordance with an agreement made as a result of collective bargaining; and, (b) that agreement provides that no employee shall be employed more than 1040 hours in any period of 26 consecutive weeks (29 USC § 207(b)(1)).

Under your company's proposed work schedule, an employee will not work more than 1040 hours in any 26 consecutive week period. The deciding issue, therefore, is whether this schedule was made through a collective bargaining agreement (CBA). Your letter does not provide this information. If there is a CBA approving this schedule, then your company need not pay overtime wages to any employee working the stated hours. If there is no CBA, however, then all employees working 44 hours in any week must be paid four hours of overtime wages for that week.

This opinion is based on the information provided in your letter of June 24, 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

cc: Carmine Ruberto

