



New York State Department of Labor
Eliot Spitzer, *Governor*
M. Patricia Smith, *Commissioner*

January 30, 2008



Re: Request for Opinion
Day of Rest/M meal Break
File No. RO-08-0012

Dear [REDACTED]:

In your letter of January 25, 2008, you ask whether parties may enter into a collective bargaining agreement that does not provide for days of rest as mandated by New York State Labor Law §161 or meal breaks as mandated by New York State Labor Law §162. Please be advised that you do not provide enough information for a meaningful response to your questions.

It is so well-settled as to need no citation here that, in general, parties may not enter into a contract that provides for a violation of law. However, in Matter of American Broadcasting Company v. Roberts, 61 NY2d 244 (1984) the New York State Court of Appeals held that employees may waive certain benefits provided to them by the Labor Law in certain cases. The "strong public policy of the statute (is) not undermined . . . where the waiver of statutory benefits (is) freely, knowingly, and openly arrived at, without taint of coercion or duress" (id.). The Court then cited other cases in which waivers were permitted "under specified circumstances." The Court held that such cases focused upon "the existence of a bona fide agreement by which the employee received a desired benefit in return for the waiver, the complete absence of duress, coercion or bad faith and the open and knowing nature of the waiver's execution" (id at 249-250).

If, upon your review of *Roberts* and its progeny, you believe that you still require an opinion on these issues, please provide a description of the circumstances that you claim permits waiver of these statutory benefits. Please take note, however, that providing other statutorily required benefits, such as overtime wages and payment for time spent on certain breaks (*see* 29 CFR 785.18) does not constitute providing "desired benefits."

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Thank you for your consideration in this matter. If you have any questions, please feel free to contact me.

Very Truly Yours,

Maria L. Colavito Counsel
By: Jeffrey G. Shapiro
Senior Attorney

JGS:jc