



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

April 22, 2010

[REDACTED]

Re: Request for Opinion
Fingerprinting
RO-10-0024

Dear [REDACTED],

This letter is written in response to your letter dated February 12, 2010, in which you request an opinion as to whether the use of a biometric device in a time clock violates Section 201-a. The device described in your letter interprets biometric information from individuals' fingerprints, but does not store fingerprint images from the information gathered. You question whether the use of such a device is permissible under Section 201-a of the Labor Law. You also question whether a voluntary program, wherein the employer encourages, but does not compel, employees to use such a device in lieu of a punch card is permissible under Section 201-a.

Section 201-a prohibits, in short, the fingerprinting of employees unless fingerprinting is otherwise required by law. Under that section, it matters not that the device does not store the employee's fingerprint since it is the fingerprinting, rather than the storing of the fingerprint, that is prohibited. Accordingly, an employer may not require its employees to use the device described in your letter since such a practice is prohibited by Section 201-a of the Labor Law. However, instruments that measure the geometry of the hand are permissible under the Labor Law so long as they do not scan the surface details of the hand and fingers in a manner similar or comparable to the scanning of a fingerprint. Neither the method by which the fingerprint is taken nor what is done with it after it is taken, are elements in determining compliance with this law.

With regard to whether the voluntary fingerprinting of employees is permissible under Section 201-a, that Section provides, in relevant part, that "no person, as a condition of securing employment or of continuing employment, shall be required to be fingerprinted." [emphasis added] While Section 201-a does not prohibit the voluntary fingerprinting of employees, employers may not take any adverse employment action against employees for not volunteering to be fingerprinted, or otherwise coerce employees to "volunteer" to participate in the fingerprinting program. Please take notice

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that this Department would closely scrutinize any program in which an employee complains that participation is not, in fact, "voluntary." However, in response to your hypothetical inquiry, it is the opinion of this Department that the voluntary fingerprinting of employees is not prohibited by Section 201-a of the Labor Law.

This opinion is based on the facts set forth in your letter dated February 12, 2010. 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:MP