



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



December 1, 2008



Re: Request for Opinion
Frequency of Payments
RO-08-0139

Dear 

I have been asked to respond to your letter of November 3, 2008, in which you request the Department's permission to pay two cooks and four to six part-time servers, employed by your restaurant, on a bi-weekly instead of weekly basis.

Cooks and wait staff, as you may well know, are classified as "manual workers" under Article 6 of the Labor Law and, as such, they must be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned unless authorized by the Commissioner of Labor. (See, Labor Law §191(1)(a)(i).) The Commissioner may only authorize an employer to pay manual workers bi-weekly or semi-monthly if the employer has, in the three years preceding, an average of one thousand or more persons employed in New York, or three thousand or more persons outside of the state. (See, Labor Law §191(1)(a)(ii)). Therefore, since your restaurant, as you state in your letter, only employs a total of six to eight employees, the Commissioner has no authority to authorize the payment of wages for manual workers, such as those described in your letter, less frequently than weekly.

This opinion is based on the information provided in your letter dated November 3, 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:jc
cc: Carmine Ruberto

Tel: (518) 457-4380, Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240