



New York State Department of Labor

David A. Paterson, Governor

Colleen C. Gardner, Commissioner

December 7, 2010

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Request for Opinion
Hours of Work for Live-in Domestic Worker
RO-10-0075

Dear [REDACTED]:

This letter is written in response to your letter of May 4, 2010 concerning the hours for which a live-in domestic worker or "nanny" must be paid. You indicate that the usual daily schedule is that you and your wife would have left your home by 5:30am. Your nanny and your two children wake at 8:00am. Your wife returns home at 5:30pm and the entire household is asleep between 9:00pm and 10:00pm.

For purposes of the Minimum Wage Act, Article 19 of the Labor Law, an employee is defined as "any individual employed or permitted to work by an employer in any occupation..." (Labor Law §651(5)). Department of Labor Regulations refine the definition by providing "a residential employee – one who lives on the premises of the employer – shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he or she is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment" 12 N.Y.C.R.R. §142-2.1(b). Wages need not be paid to your nanny during her normal sleeping hours, approximately 10:00pm to 8:00am, but she is required to be paid for any hours during that time period when she actually wakes and tends to the children.

Payment of wages is required for the period between 5:30pm and 10:00pm if your nanny is not free to leave during that time period.

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You also ask what hours your nanny must be paid on those occasions where both you and your wife are absent "all day and overnight." Payment of wages is not required for "her normal sleeping hours", except as provided above. Presumably she would not be free to leave her place of employment for the remaining hours and payment of wages would be required.

On August 31, 2010, Governor Paterson signed the Domestic Workers Bill of Rights. This new law, effective November 29, 2010, will have a significant impact on your employment of your nanny. Changes in the Labor Law are summarized below.

Section 2 of the Labor Law is amended by adding a new subdivision 16 which defines domestic worker. The definition includes "a person employed in a home or residence for the purpose of caring for a child...".

A new section 170 is added to the Labor Law which provides, in part, "No person or corporation employing a domestic worker...shall require any domestic worker more than... forty-four hours in a week for domestic workers who reside in the home of their employer, unless they receive compensation for overtime work at a rate which is at least one and one-half times the worker's normal wage rate."

Section 161(1) of the Labor Law is amended to provide that domestic workers must be provided with at least twenty-four consecutive hours of rest in each calendar week. A domestic worker may voluntarily work during the required day or rest, as long as he or she is compensated at the overtime rate. Whenever possible, the day of rest should "coincide with the traditional day reserved by the domestic worker for religious worship."

"In addition, after one year of work with the same employer a domestic worker shall be entitled to at least three days of rest in each calendar year at the regular rate of compensation" Labor Law §161(1).

Other provisions of the new law provide domestic workers with certain protections from discrimination and harassment found in the Human Rights Law and provide for workers compensation benefits.

This determination is based exclusively on the facts and circumstances described in your letters dated May 4, 2010, and is given based on your representation, express or implied that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or

historical background not contained in your letters and email might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel



By: Victor M. DeBonis
Senior Attorney

cc: Carmine Ruberto