



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

January 14, 2010



Re: Request for Opinion
Section 195(1)
RO-09-0186

Dear [REDACTED]:

This letter is written in response to your request for an opinion dated December 18, 2009 in which you request an opinion relating to the requirements of the recently amended Section 195(1) of the Labor Law. Your letter asks, in short, (1) whether the practice of using a new hire offer letter to provide statutory required information in Section 195(1) is permissible under that Section, and (2) whether employees can execute the written acknowledgment required by Section 195(1) electronically, instead of providing a "wet" signature on a hard copy document.

In response to your first question, please be advised that it is the opinion of this Department that the notice of pay rate required by Section 195(1) may be provided in an offer of employment so long as the notice otherwise satisfies the requirements of that Section.

With regard to your second question, it is the position of this Department that the written acknowledgement may be executed electronically by the employee so long as the following conditions are met:

- The employer must ensure that the employee has access to a computer with printing capabilities so that the employee is able to access and print a copy of the notice at the time of hire and at any time throughout the employment relationship. No employee may be charged any fee, directly or indirectly, for access to, or printing of, a notice pursuant to Section 195(1).
- The notice must be in a format that the employee is able to review at the computer in which he/she has access. (e.g. web page, word processing document, etc.)
- Affirmative steps are required by the employee to acknowledge receipt of the notice. The employer must ensure that the form of the acknowledgement is sufficient to guarantee

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that the employee has received and reviewed the notice, and that the employee is aware that his/her actions have legally significant consequences.

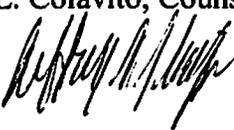
- Examples of sufficient forms of acknowledgment include, but are not limited to the following:
 - An acceptable electronic signature under the State Electronic Signature and Records Act. (NYS Technology Law §301 *et seq.*) For further guidance on the adequacy of an electronic signature under that Act, please refer to the guidelines and regulations promulgated by the New York State Chief Information Officer and Office of Technology Electronic Signatures and Records Act (ERSA).
 - An electronic response through email containing a notification of pay rate which positively states that the employee acknowledges receipt of the notice. However, evidence of mere receipt of such notification is insufficient.
 - In instances in which an employee is provided notice through a “hiring terminal,” like those commonly seen in large retail establishments at which employees may fill out job applications, or an employer internet page, acknowledgement may be provided instantaneously so long as the employee is required to affirmatively indicate receipt of the notice.
 - Through a scanned or faxed image of the signed notice and acknowledgement.

I trust this to be responsive to your inquiry. 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

cc: Carmine Ruberto