



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



December 2, 2008



Re: Request for Opinion
Minimum Wage Orders
RO-08-0144

Dear [REDACTED]:

I have been asked to respond to your letter of November 17, 2008, in which you ask for an opinion on the manner in which regulation 12 NYCRR §142-2.3 applies to employees who are "exempt under the Fair Labor Standards Act and New York State law." Please be advised that this Department cannot issue the requested opinion due to your failure to provide requested additional information.

On November 21, 2008, I called your office and left a telephone message asking for clarification of what you meant by the term "exempt" in relation to New York State law. I explained that the only persons "exempt" from New York State laws and regulation regarding minimum wage are persons who are not "employees" as that term is defined in Labor Law §651(5) and 12 NYCRR §142-2.14¹. I also explained that as an "exempt" person under New York State law would be one who is not an employee, then no part of the minimum wage orders, including but not limited to 12 NYCRR §142-2.3, would apply to such person. Accordingly, I asked you to provide me with the criteria you used to conclude that the employees in question were exempt.

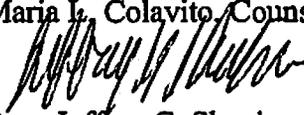
As you have not replied to this request as of the date of this letter, this Department is unable to provide a meaningful answer to your question. The file on your request for an opinion is being closed at this time; should you wish to renew your request for an opinion in the future,

¹ Please note that federal law and New York State law have different definitions for the term "employee" and use different standards to determine which of these employees are "exempt" from various provisions of law. Therefore, the fact that an employee may be exempt from certain provisions of federal law does not mean that such person is exempt from the analogous provisions of New York State law.

kindly include with such request the information requested above.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro", written over the printed name.

By: Jeffrey G. Shapiro
Associate Attorney

MLC:JGS:jc
cc: Carmine Ruberto