



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

December 28, 2010



Re: Request for Opinion
Collective Bargaining Agreement
RO No. 10-0192

Dear [REDACTED]:

I've been asked to respond to your request for an opinion as to the applicability of the new Hospitality Wage Order to collective bargaining agreements (CBAs). Your request states that you have clients in the hospitality industry employing workers under collective bargaining agreements, and that such agreements do not expire in 2011. While you did not specify which terms may be in conflict with the Hospitality Wage Order, we presume that the provisions of the new order must impose requirements or terms and conditions of employment that conflict with the terms of the CBAs.

The Hospitality Wage Order text is silent as to the impact of collective bargaining agreements on its terms and provisions. However, it is a minimum wage order and covers the conditions which must be met for the employment of workers in the hotel and restaurant industries in the State of New York. The minimum wage provisions contained therein must be adhered to by all employers in those industries, regardless of the existence of a collective bargaining agreement, or lack thereof. Employers and employees may not circumvent minimum wage requirements by consensus in the collective bargaining agreement (*see Livadas v Bradshaw, California Commissioner of Labor*, 512 U.S. 107, *Metropolitan Life Insurance Co. v Massachusetts*, 471 US 724 (partially overruled on other grounds), *Local 246 Utility Workers Union v. Southern Cal. Edison Co.*, 83 F.3s 292, 297 (CA9, 1996); *Braddock v. Madison County*, 34 F.Supp.2d 1098, 1107, (S.D. Indiana, 1998) citing to *Brooklyn Savings Bank v. O'Niel*, 324 U.S. 697, 706707 (1945), *American Broadcasting Companies, Inc. v. Roberts*, 61 N.Y.2d 244 (1984), New York State Department of Labor Opinion Letters RO 09-0083, 09-0159, both available at <http://www.labor.ny.gov/legal/counsel/counsel-opinion-letters.page>).

If this letter does not address the impact of the Hospitality Wage Order on a specific provision of interest to you, you may follow up with a letter that identifies this provision specifically.

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This opinion is based exclusively on the facts and circumstances described in your request dated December 22, 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 letter 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: Benjamin A. Shaw
Senior Attorney