



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

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November 30, 2009

[REDACTED]

Re: Request for Opinion  
Furloughs  
RO-09-0065

Dear [REDACTED]:

I have been asked to respond to your facsimile dated April 28, 2009 in which you inquire as to the permissibility of using a furlough work schedule where your company will close its offices on Fridays for a roughly two month period lasting from July 4, 2009 to September 7, 2009. Initially, please accept my apology for not responding sooner; unfortunately the volume of requests we receive and the increase in hearings and other matters handled by our office prevented it. While we recognize that this opinion is coming too late to affect your furlough plans for this past summer, should this issue ever arise again, the information provided in this letter may be of some assistance.

In your letter, you state that your staff would essentially be asked to work an 80 percent schedule during this period and that the staff has not been told that they can use vacation time to offset the loss in pay. Your letter asks whether the furlough work schedule is a violation of the New York State wage and hour laws and whether not allowing employees to use their vacation time would force them to "lose their exempt status under the time and wage law."

Please be advised that this letter should not be construed as agreement with your assertion that the employees described are in fact "exempt" under any law, rule, or regulation as your letter neither inquires into such exemptions nor provides enough information to make such a determination. Furthermore, since the Fair Labor Standards Act is a federal law enforced by the United States Department of Labor, it would be inappropriate for this Department to provide interpretations of federal law as we have no jurisdiction over such law. However, it is worth noting that an employee's exempt status under the Fair Labor Standards Act may, in some instances, be dependent on the number of hours worked during a pay period. Therefore, you should direct any questions regarding the requirements or proper interpretation of the Fair Labor

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W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

Standards Act to the United States Department of Labor, Wage and Hour Division in writing or by telephone at:

Brooklyn Area Office  
US Dept. of Labor  
ESA Wage & Hour Division  
625 Fulton Street, 7th Floor  
Brooklyn, NY 11201

Tel: (718) 254-9410  
1-866-4-USWAGE

With regard to the New York State Labor Law, you are correct in that nothing in the New York State Labor Law ties vacation or furloughs to an employee's exempt status. However, please be advised that Labor Law §195(5) requires that employers notify their employees in writing or by publically posting the employer's policy on sick leave, vacation, personal leave, holidays and hours. Furthermore, such a policy is enforceable upon employers through Labor Law §198-c, which requires that employers abide by the terms of agreement, and policies, to provide benefits or wage supplements. (*See, Glenville Gage Co. v. Industrial Bd. of Appeals of New York, Dep't of Labor, 70 A.D.2d 283 (3<sup>rd</sup> Dep't 1979).*)

This opinion is based on the information provided your facsimile dated April 28, 2009. A different opinion might result if the circumstances stated therein 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:mp

cc: Carmine Ruberto