



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

December 14, 2009

[REDACTED]

Re: Request for Opinion
Call-In Pay
RO-09-0140

Dear [REDACTED]:

This letter is written in response to your letter of October 14, 2009 in which you inquire as to the requirements under the Labor Law for employees who leave work almost immediately after arriving due to illness. Your letter states that an employee within the coverage of the New York State Labor Law arrived at work but left work after only ten minutes on the job because he was not feeling well. Your letter inquires as to the legal procedure for such situations and whether it is necessary to have a company policy for such situations.

New York State Regulation 12 NYCRR §142-2.3, which is entitled "Call-in pay," provides that "an employee who by request or permission of the employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the basic minimum wage." Please be advised that the Department interprets this regulation to only require the payment of call-in pay in situations in which an employer sends or otherwise directs an employee to cease working before the end of his or her regularly scheduled shift. If, for example, there is work available to an employee but the employee, on their own accord, stops working, such employee is not entitled to call-in pay. On the other hand, employees sent home early for lack of work are entitled to call-in pay. In the limited instances in which an employee chooses to go home of his or her accord on a day no work is available, a factual determination will need to be made to determine the ultimate circumstances surrounding the employee's departure from work. With regard to the situation described in your letter wherein an employee left work after only ten minutes on the job because he was not feeling well, the employee would not be entitled to call-in pay under 12 NYCRR §142-2.3.

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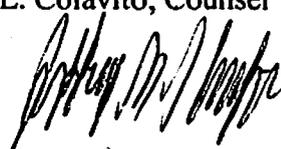
In regard to whether employers are required to have a specific policy regarding call-in pay, please be advised that while employers are not obligated to develop a specific policy relating to sick/leave time to any employee, if an employer has a policy of providing such paid sick/vacation time it must notify its employees of such policy in writing or by posting and then adhere to it. Labor Law §195(5) requires that employers notify their employees of the employer's policy on sick leave, vacation, personal leave, holidays and hours either in writing or by publicly posting such policy. Furthermore, such a policy is enforceable upon employers through Labor Law §198-c, which requires that employers abide by the terms of agreements, 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 (3rd Dep't 1979).)

This opinion is based on the information provided in your letter of September 10, 2009. A different opinion might result if the circumstances outlined in your letter 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