



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

August 27, 2008

[Redacted]

Re: Request for Opinion  
Employee Training  
RO-08-0020

Dear [Redacted]:

I have been asked to respond to your letter of February 28, 2008. Please accept my apology for the time it has taken to respond. Your letter states that you own a day care center and that under New York State law; teachers are required to obtain 30 hours of childcare training in designated subjects every two years. Your letter asks whether you are required to pay the teachers for time spent in training.

New York State Labor Law §2(7) defines the term "employed" to include persons "permitted or suffered to work." It is the opinion of this Department that, generally, a person is "employed" by another when he/she is acting under the direction and control of that person, or if he/she is doing some act for the benefit of that person. Therefore, the answer to the question of whether a person is "employed" by another during education or training depends on whether the alleged employee is receiving such training for his/her own benefit or for the benefit of his/her employer. If, for example, your business had its own unique standards and procedures for child care in addition to those mandated by New York State, and if the business required all childcare workers in its employ to receive training in such standards and procedures, the time spent in such training would be for the benefit of the employer, and the employees would have to be paid for the time spent in such training.

However, in the situation you have described, the employees attend State-mandated classes to maintain their certification as childcare workers. Presumably, this training and certification could be used by the employee to obtain employment with any other child care provider in New York State. This training, therefore, is not unique to your business, and would have to be obtained by a childcare worker whether or not he/she was employed by your business. It is the Department's opinion, therefore, that the training you describe is for the benefit of the employee, not the employer. Therefore, these childcare workers are not "employed" by your business during their State-mandated training and your business is not obligated by New York State law to compensate these employees for time spent by them in such training.

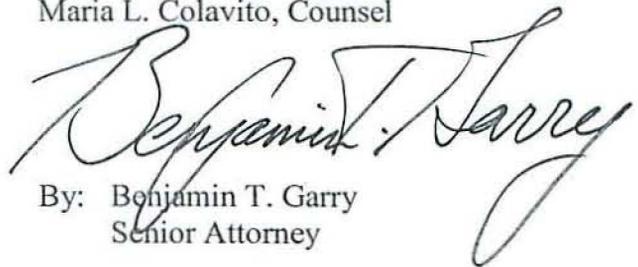
Please be advised, however, that the above opinion applies only to that portion of employee training which is necessary to meet State mandates. Any portion of an employee's training which is not State mandated and is specific to an individual employer would be considered time spent in employment for which the employee would have to be paid.

Your letter also asks whether training time must be compensated at time and one half for all hours in excess of forty in one week. Should the total hours "employed," as described above, by your workers total more than forty hours in one week, the excess hours must be paid at time and one half.

This opinion is based on the information provided in your letter of February 28, 2008. A different opinion might result if the facts provided were not accurate, or if any other relevant fact was not provided.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in black ink that reads "Benjamin T. Garry". The signature is written in a cursive style with a large, sweeping "B" and "G".

By: Benjamin T. Garry  
Senior Attorney

cc: Carmine Ruberto

Bcc: OPINION FILE  
DAYFILE