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

July 13, 2010

[redacted]

Re: Request for Opinion
Electronic Pay Statement
Labor Law §195(3)
RO-10-0072

Dear [redacted]:

I have been asked to respond to your inquiry of May 6, 2010 in which you ask whether an employer may be permitted to offer employees the option of receiving electronic paystubs in lieu of sending out paper paystubs. Your inquiry proposes providing employees who do not have the ability to view and print their paystubs while at work with the option to receive their paystubs electronically via the internet so the employee can print and/or save their electronic paystub on the employee's home computer.

New York Labor Law §195(3) provides, in pertinent part:

> Every employer shall . . . furnish each employee with a statement with every payment of wages, listing gross wages, deductions and net wages, and upon the request of an employee furnish an explanation of how such wages were computed.

It has been the position of the Department of Labor that computer accessible employee wage statements are in compliance with Labor Law §195(3), provided the computers from which the employees access the statements are capable of printing such statements. Furthermore, it is this Department's opinion that the access granted to such employees must permit them to view and print wage statements without undue delay or effort and while on company time. If the employees are not given an option while at work to view as well as print their paystubs then the employer will be found in violation of Labor Law §195(3). In other words, an employer can give employees the option of choosing to receive paystubs either in paper form or in electronic form; but if the employees choose to receive their paystubs in electronic form, then the employer is required to provide the employee with the ability not only to view the paystub, but to print it too while the employee is at work and without any cost to the employee. In addition, please note that Labor Law §191 requires full payment of wages and that Labor Law §193 forbids any deductions from wages that are not for the benefit of the employee. Accordingly, employees may not be charged any fee, directly or indirectly, by any person, for the access to, or the printing of, wage statements.

Your proposed practice differs from that permitted by the Department since employees who receive a paystub electronically would be required to use his/her own printer, ink, paper, and time to

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obtain a hard copy of the paystub, despite the fact that Section 195(3) requires it to be provided at absolutely no cost to the employee. Therefore, though an employer could provide employees with electronic paystubs delivered via email, such practice is only permissible if the employer also provides employees with either paper paystubs or a computer and printer at the employee's workplace where the employee may view and print the paystub. Additionally, it is anticipated that the employer's utilization of electronic wage statements will not, in any cognizable way, diminish the protections against release of confidential information contained on such pay stub that would otherwise be afforded to employees through the employer's use and distribution of paper wage statements. Employers should take efforts to ensure, at the very least, that the electronic statements are securely transmitted and/or stored.

Your inquiry also asserted that the regulations promulgated pursuant to New York's Electronic Signatures and Records Act (NY Technology Law §301 *et seq.*; 9 NYCRR §540 *et seq.*) conflict with this interpretation of Labor Law §195(3). The Electronic Signatures and Records Act (ESRA) does not stand for the general proposition that an electronic document will meet the legal requirements of a required non-electronic document and can be substituted therefore in each instance. Rather, it "establishes that electronic signatures and records have the same force and effect as signatures and records produced by non-electronic means," and provides that electronic signatures "shall have the same validity and effect as the use of a signature affixed by hand." (9 NYCRR §540.1). Since Section 195(3) of the Labor Law does not require that the employee sign their paystub upon receipt, no conflict exists with this requirement in the ERSA.

While regulation 9 NYCRR §540.5(a) provides that "[a]n electronic record used by a person shall have the same force and effect as those records not produced by electronic means," that provision only pertains to their use by governmental entities. (9 NYCRR §540.5(a)). Since governmental entities are not subject to the requirements of Section 195(3) of the Labor Law, there is no apparent conflict between that Section and the ERSA, and its enactment does not relieve or modify employers of the requirements of the Labor Law.

This opinion is based exclusively on the facts and circumstances described in your request 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

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