



New York State Department of Labor
Andrew M. Cuomo, *Governor*
Colleen C. Gardner, *Commissioner*

January 26, 2011

[REDACTED]

Re: Request for Opinion
Labor Law §195(3)
Private Cause of Action
RO -10-0088

Dear [REDACTED]:

This letter is written in response to your faxed letter of June 7, 2010, in which you ask whether an employee has a private cause of action to enforce the provisions of Labor Law §195(3) and whether a union can bring such an action.

By way of background, Labor Law §195(3) provides "Every employer shall... (3) 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." Labor Law §198(1) provides, "In any action instituted upon a wage claim by an employee or the commissioner in which the employee prevails, the court may allow such employee in addition to ordinary costs, a reasonable sum, not exceeding fifty dollars for expenses which may be taxed as costs. No assignee of a wage claim, except the commissioner, shall be benefited by this provision." The term "wage claim" is not defined in the statute. If the failure to provide the wage statement was accompanied by a failure to pay proper wages, it is plausible to believe the action brought on the wage claim could include a claim for failure to provide the wage statement required by §195(3).

Finally, Labor Law §198(3) provides, "Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. All employees shall have the right to recover full wages, benefits and wage supplements accrued during the six years previous to the commencing of such action, whether such action is instituted by the employee or by the commissioner."

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

Under these provisions of current law, taken as a whole, it is clear that an employee can bring an action to recover wages (as defined in Labor Law §190(1)) and benefits or wage supplements (as defined in Labor Law §198-c (2)). It is less clear whether a private cause of action exists to enforce the wage statement and record keeping requirements of Labor Law §195.

The Labor Law neither authorizes nor prohibits the bringing of private actions by a labor union for violations of Labor Law §195(3). Ultimately, whether a violation of Section 195 gives rise to a private cause of action or whether a labor union can bring such an action may only be determined by the court in which such an action is brought. An employee or his collective bargaining agent, acting on the employee's behalf, may file a complaint with the Commissioner of Labor concerning a violation of Labor Law Article 6, Article 19, or Article 19-A pursuant to Labor Law §196-a.

On December 10, 2010, Governor David A. Paterson signed the "Wage Theft Prevention Act." The Act, which takes effect on April 9, 2011 amends Labor Law §198, adding a new subdivision 1-D which provides, in pertinent part:

If any employee is not provided a statement or statements as required by subdivision three of section one hundred ninety-five of this article, he or she may recover in a civil action damages of one hundred dollars for each work week that the violations occurred or continue to occur, but not to exceed a total of twenty-five hundred dollars, together with costs and reasonable attorney's fees. The Court may also award other relief, including injunctive and declaratory relief, that the court in its discretion deems necessary or appropriate.

This provision clearly gives an employee a cause of action for violations of the subdivision to which you refer. Amended language set forth in §198 1-B also provides for similar enforcement by private action for failure to provide the notice required by Labor Law §195 (1). A copy of the full text of the Wage Theft Prevention Act is enclosed for your information.

This determination is based exclusively on the facts and circumstances described in your letter dated June 7, 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

A handwritten signature in black ink, appearing to read "V. DeBonis", with a horizontal line extending to the right.

By: Victor M. DeBonis
Senior Attorney

Enclosure
cc: Carmine Ruberto