



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

October 2, 2009



Re: Request for Opinion
Airline Engineering Mechanics
RO-09-0116

Dear [REDACTED]:

This letter is written in response to your letter of July 22, 2009 in which you request this Department's opinion as to whether engineering mechanics working for your airline are exempt from the New York State overtime regulations. You state that it is the intention of your company to implement a "five day on and three day off" schedule in which mechanics would sometimes work more than forty hours per week. Your letter inquires as to whether these individuals are exempt from the New York State overtime regulations based on their inclusion in coverage of the federal Railway Labor Act, a class of workers exempted from coverage under the federal Fair Labor Standards Act (FLSA). Your letter also inquires as to the permissibility of a split-shift schedule in which the mechanics would work two non-consecutive blocks of four hours in the same day.

The FLSA is a federal law enforced by the United States Department of Labor. Therefore, please be advised that it is not appropriate for this Department to provide interpretations of federal law as we have no jurisdiction over the enforcement of such law. If you wish to obtain a formal opinion with regard to the interpretation of the FLSA, you should direct your request to the United States Department of Labor, Wage and Hour Division. You can consult your local phonebook to find the office of the USDOL nearest your home or office or you may go to the USDOL website, www.dol.gov for further information in this regard.

Please note, however, that the FLSA does not prevent the states from enacting wage and overtime laws and regulations that are more beneficial to workers than the

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FLSA (see 29 U.S.C. §218; *Manliguez v. Joseph*, 226 F. Supp.2d 377 (EDNY 2002)). Regulations adopted pursuant to the New York State Minimum Wage Act do contain some overtime requirements that apply to employees who are otherwise exempt under the FLSA. Therefore, to the extent that it is necessary to determine the applicability of the New York State Minimum Wage Act, it is appropriate for this Department to determine the applicability the exemption in Section 13(b)(3) of the FLSA for employees governed by the Railway Labor Act. This Department's interpretation of the applicability of such exemption neither binds, nor is bound by, an interpretation of the United States Department of Labor.

The New York State Minimum Wage Act, which contains the State minimum wage and overtime provisions, generally applies to all individuals who fall within its definition of "employee." (see, Labor Law §651 *et seq.*) Section 651(5) defines "employee" as "any individual employed or permitted to work by an employer in any occupation," but excludes fifteen categories of workers from that definition. (see, Labor Law §651(5)(a-o).) Subpart 2.2 of the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR §142-2.2) provides, in relevant part, that all "employees" must be paid at a rate not less than one and one half times their regular rate of pay in accordance with the provisions and exceptions of the FLSA. Subpart 2.2 also provides that employees exempted under Section 13 of the FLSA must nevertheless be paid overtime at a rate not less than one and one half times the minimum wage. In short, "exempt" employees under Section 13 of the FLSA must be paid at a rate of not less than one and one half times the minimum wage for overtime hours worked unless such employees fall outside of the New York Minimum Wage Act's definition of "employee." While this Department recognizes that employees governed by the Railway Labor Act are exempt from the overtime pay requirements pursuant to Section 13(b)(3) of the FLSA, nothing within the New York Labor Law or the Minimum Wage Orders otherwise excludes such employees from the definition of "employee" contained therein.

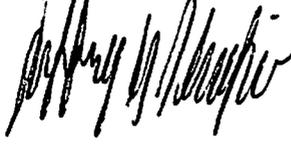
Accordingly, under New York's Minimum Wage Act the employees in question are required only to be paid at a rate not less than one and one half times the minimum wage rate for all hours worked in excess of forty per work week. If their regular rate of pay exceeds one and one half times the minimum wage rate, such employees would not be required to be paid in excess of that regular rate for overtime hours worked. However, since the employees in question are not otherwise excluded from the coverage of the State Minimum Wage Act, i.e. they fall within the meaning of the term "employee," such employees are entitled to an additional hour's pay at the minimum wage rate, in addition to the minimum wage such employee is required to be paid, for any days in which he/she works a split shift. (12 NYCRR §142-2.4.) Again, however, should such an employee's regular rate of pay exceed the minimum wage rate plus one additional hour's pay at the minimum wage rate, that employee is not required to be paid any additional amount as a result of working a split shift.

This opinion is based on the information provided in your letter of July 22, 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