



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

May 21, 2009

[REDACTED]

Re: Request for Opinion
Labor Law §191(1)
RO-09-0058

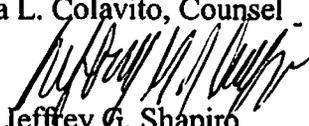
Dear [REDACTED]

I have been asked to respond to your letter dated April 13, 2009 in which you inquire about the validity of a "ruling" given to you by Senior Labor Standards Investigator Christine Anderson regarding Section 191(1) of the New York State Labor Law. Please be advised that it is not the policy of the Department of Labor's Counsel's Office to render legal opinions to persons currently under investigation by the Department of Labor. Your letter has been referred to the Department's Division of Labor Standards.

As a general matter, please be advised that by amendment to Labor Law §191(1)(c), effective October 16, 2007, all commission sales agreements in effect on and after that date must be in writing in the form required by law, signed by both the employer and the commission salesperson, kept on file by the employer for a period not less than three years and made available to the Department of Labor upon request. An employer's failure to produce such writing requires that it be presumed that the terms of employment presented by the employee are the agreed terms of employment. Additionally, it is worth noting that Labor Law §190(1) defines wages broadly to include pay on a draw or commission basis, thereby requiring that such amounts be paid in the manner described by the written agreement and in accordance with the provisions of Article 6 of the Labor Law.

Very truly yours,

Maria L. Colavito, Counsel

By: 
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Associate Attorney

JGS:mp

cc: Carmine Ruberto
Christine Anderson

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