



New York State Department of Labor

David A. Paterson, *Governor*

M. Patricia Smith, *Commissioner*

August 29, 2008

[REDACTED]

Re: Request for Opinion
Meal Periods
RO-08-0104

Dear [REDACTED]:

I have been asked to respond to your letter of August 7, 2008 in which you state that [REDACTED] of [REDACTED] recently made a decision to change the time in which its employees take a meal period. Your letter further states that you spoke with a "Connie Hickens," who advised you that your actions were correct, but that it would be advisable to contact this office to obtain a written confirmation. Since no one with that name is employed by the Department, we presume you are referring to Ms. Constance Higgins-Beer who is employed as an investigator for Worker Protection with the Department of Labor. Regardless, it is this opinion that is controlling with regard to your inquiry. Accordingly, please be advised that it is the opinion of this Department that the change described in your letter is in violation of Labor Law §162.

Labor Law §162(4) requires that all employees be allowed to take a meal period midway through a shift lasting longer than 6 hours and starting between 1:00PM and 6:00AM. As your letter states that workers will start their shift at 5:00AM and work until 1:30PM, such workers should be given a meal period at approximately 9:15 AM, which meal period, according to the same section of law, must last at least 60 minutes for persons employed in or in connection with a factory, and 45 minutes for all other workers. Accordingly, your stated intention to provide a meal period from 9:30AM to 10:00AM would be a violation of this statute. Please take note, however, that Labor Law §162(5) authorizes the Commissioner of Labor to permit a shorter meal period. (See attached, Division of Labor Standards Guidelines for Meal Periods.)

This opinion is based on the information provided in your letter of August 7, 2008. A different opinion might result if the circumstances outlined in your letter changed, 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:jc
cc: Carmine Ruberto

Tel: (518) 457-4380, Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

