



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

March 11, 2010



Re: Request for Opinion
Minimum Wage and Overtime
Summer Camp Workers
RO-10-0007

Dear :

I have been asked to respond to your emails on January 11th and 12th of this year in which you request an opinion from this Department regarding the State minimum wage and overtime requirements. You ask whether a nurse that is employed by a non-profitmaking summer camp for less than three months a year, but works for another employer for the rest of the year, is subject to the State minimum wage and overtime requirements during the time spent working for the summer camp.

Article 19 of the Labor Law, and the regulations promulgated thereunder, provide that all "employees," as defined for the purposes of that Article and regulations, are required to be paid not less than the minimum wage for all hours worked and an overtime premium for all overtime hours worked. However, as noted in your emails, Section 651(5)(k) excludes individuals employed "in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually." That definition is explained further by regulation 12 NYCRR §142-3.12(14), which applies to non-profitmaking institutions¹, by providing, in full, as follows:

[(a) Employee means any individual permitted to work by an employer, except as provided below]

(14) In or for a summer camp or conference for not more than three months annually.

¹ Please note that a non-profitmaking institution is the equivalent of a not-for-profit corporation.

(i) A person who works in not more than 13 calendar weeks in a calendar year in or for a summer camp or conference is deemed to have worked for not more than three months annually. A person who works in more than 13 calendar weeks in a calendar year is deemed to be an employee for the entire period of employment.

(ii) A summer camp or conference means a camp or conference which is open any part of the period from June 21st to September 21st, and which is operated by a nonprofitmaking institution.

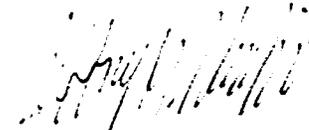
Based on the plain language of Section 651 and 12 NYCRR §142-3.14(14), the fact that individuals are employed during other parts of the year by another employer that does not meet any of these exceptions does not remove that employee from the summer camp exception. Therefore, please be advised that the fact that a summer camp nurse or other employee works for another employer the other nine months of the year does not remove that nurse from the exclusion in the definition of employee for the purposes of minimum wage and overtime for that period of time in which the nurse is employed in a summer camp operated by the not-for-profit.

This opinion is based on the facts set forth in your emails of January 11th and 12th of this year. A different opinion might result if the circumstances outlined in your emails 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