



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

April 5, 2010

[REDACTED]

Re: Request for Opinion
Labor Law §196-d
RO-10-0038

Dear [REDACTED],

This letter is written in response to your letter dated March 15, 2010, in which you request an opinion letter concerning the Department's interpretation of the holding of the Court of Appeals in *Samiento v. World Yacht, Inc.*, 10 NY3d 70 (2008). Your letter states, in relevant part, that after one-half of an employer's service staff complained that the employer violated Section 196-d, the employer was "subsequently found to have violated Labor Law §196-d." Your question relates to the time periods in which the complaining and non-complaining employees are required to be paid the unlawfully retained monies.

Your letter does not state in what forum the employer was found to be in violation of the Labor Law. In order to provide response to your question, it is necessary to know the forum in which the employer was found to be in violation of Labor Law §196-d since the applicable rules may differ depending on those facts. As such, and for the reasons set forth below, please provide a complete description of the factual circumstances prompting this inquiry so that the Department may consider such facts in rendering its opinion.

Additionally, please be advised that the Department will be unable to provide an opinion in response to your request if this inquiry is based not on a hypothetical situation, but on some current case or controversy. As it appears that this matter was or is either the subject of an investigation of the Department's Division of Labor Standards, or some form of civil litigation, it would be contrary to the Department's policy to offer an opinion in this matter. Absent a statement indicating that the facts described are

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hypothetical, or a complete description of the factual circumstances prompting this inquiry, the Department will be unable to respond to your request for an opinion.

Very truly yours,

Maria L. Colavito, Counsel

A handwritten signature in black ink, appearing to read "Jeffrey G. Shapiro".

By: Jeffrey G. Shapiro
Associate Attorney

JGS:mp

cc: Carmine Ruberto