§ 191. Frequency of payments. 1. Every employer shall pay wages in accordance with the following provisions:

a. Manual worker.--- (i) A manual worker shall be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned; provided however that a manual worker employed by an employer authorized by the commissioner pursuant to subparagraph (ii) of this paragraph or by a non-profitmaking organization shall be paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly.

(ii) The commissioner may authorize an employer which has in the three years preceding the application employed an average of one thousand or more persons in this state or has for one year preceding the application employed an average of one thousand or more persons in this state and has for three years preceding the application employed an average of three thousand or more persons outside the state to pay less frequently than weekly but not less frequently than semi-monthly if the employer furnishes satisfactory proof to the commissioner of its continuing ability to meet its payroll responsibilities. In making this determination the commissioner shall consider the following: (A) the employer's history meeting its payroll responsibilities in New York state or if no such history in New York state is available, other financial information, as requested by the commissioner, which will assist the commissioner in determining the likelihood of the employer's continuing ability to meet payroll responsibilities; (B) proof of the employer's coverage for workers' compensation and disability; (C) proof that there are no outstanding warrants of the department of taxation and finance or the department of labor against the employer for failure to remit state personal income tax withholdings or unemployment insurance contributions; and (D) proof that the employer has a computerized record keeping system for payroll which, at a minimum, specifies hours worked, rate of pay, gross wages, deductions and date of pay for each employee. If the employers' manual workers are represented by a labor organization, the commissioner shall not grant an employer's application for authorization under this subparagraph unless that labor organization consents thereto.

Upon notice to the employer and an opportunity to be heard, the commissioner may rescind such authorization whenever the commissioner has determined, based upon the factors enumerated above, that the employer is no longer able to meet its payroll responsibilities as previously authorized.

b. Railroad worker.--- A railroad worker shall be paid on or before Thursday of each week the wages earned during the seven-day period ending on Tuesday of the preceding week; and provided further that at the written request and notification of address by any employee, every railroad corporation, with the exception of those commuter railroads under the jurisdiction of the metropolitan transportation authority, shall mail every check for wages of such employee via the United States postal service, first class mail.

c. Commission salespersons.--A commission salesperson shall be paid the wages, salary, drawing account, commissions and all other monies earned or payable in accordance with the agreed terms of employment, but not less frequently than once in each month and not later than the last day of the month following the month in which they are earned; provided, however, that if monthly or more frequent payment of wages, salary, drawing accounts or commissions are substantial, then additional compensation earned, including but not limited to extra or incentive earnings, bonuses and special payments, may be paid less frequently than once in each month, but in no event later than the time provided in the employment agreement or compensation plan. The employer shall furnish a commission salesperson, upon written request, a statement of earnings paid or due and unpaid. The agreed terms of employment shall be reduced to writing, 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 commissioner upon request. Such writing shall include a description of how wages, salary, drawing account, commissions and all other monies earned and payable shall be calculated. Where the writing provides for a recoverable draw, the frequency of reconciliation shall be included. Such writing shall also provide details pertinent to payment of wages, salary, drawing account, commissions and all other monies earned and payable in the case of termination of employment by

either party. The failure of an employer to produce such written terms of employment, upon request of the commissioner, shall give rise to a presumption that the terms of employment that the commissioned salesperson has presented are the agreed terms of employment.

d. Clerical and other worker.--- A clerical and other worker shall be paid the wages earned in accordance with the agreed terms of employment, but not less frequently than semi-monthly, on regular pay days designated in advance by the employer.

2. No employee shall be required as a condition of employment to accept wages at periods other than as provided in this section.

3. If employment is terminated, the employer shall pay the wages not later than the regular pay day for the pay period during which the termination occurred, as established in accordance with the provisions of this section. If requested by the employee, such wages shall be paid by mail.