

DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102ADDRESS REPLY TO  
P.O. BOX 608  
San Francisco CA 94102

IN REPLY REFER TO:

Legal Section

August 31, 1988

RECEIVED

SEP 1 1988

Labor Standards Enforcement  
Administrative Office  
San Francisco

Re: Request for a Legal Opinion

In belated response to your letter of March 31, 1988, seeking an opinion as to whether an employer's policy which provides accrual of vacation pay only on hours in excess of 1,400 per year, please be advised that such a policy would not, in the opinion of the Division, meet the requirements of accrual set out in the case of Suastez v. Plastic Dress-Up Co. (1982) 31 Cal.3d 774.

Frankly, I think the policy you submit is a subterfuge to avoid the pro-rata vesting requirements of Suastez. Since the normal work year is approximately 2080 hours, I believe that beginning accrual at 1400 hours is simply too late in the year. In effect, full time employees are earning a full year of vacation entitlement in the last 600 hours of the year. The unfairness of this can be seen in the situation of an employee who works 1 1/2 years, takes no vacation and is then terminated. The employee is clearly a full-time employee but would only receive vacation pay for one year.

I do think you can distinguish between parttime and full-time employees but not in such a way that so obviously discriminates against full-time employees who do not reach the 1400-hour mark. They have been denied their pro-rata vesting rights guaranteed by Suastez. It is also possible that some lower hourly figure would be acceptable as a cutoff, but 1400 hours is simply too great, especially in your client's situation where the cutoff of hours do not appear to have a reasonable relationship to the length of time the seasonal employees work.

Because the policy violates Suastez, we would ignore it and the employer would be obliged to provide pro rata vacation pay to any terminated employee who has worked less than 1,400 hours in any one year.

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If you have any questions regarding this issue, please  
feel free to contact the undersigned.

Yours truly,

  
H. THOMAS CADELL, JR.  
Chief Counsel

c.c. Lloyd W. Aubry, Jr.

1988.08.31-1