

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

45 Fremont Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060MILES E. LOCKER, *Chief Counsel*

September 11, 1998

Daniel C. Bowen, Esq.
Ackerman, Mordock & Bowen
2600 East Nutwood Avenue
Suite 800
Fullerton, CA 92831-3178RE: Request for Opinion Letter, Work Recesses, IWC Order 8-80
Paragraph 3(E)

Dear Counsel:

This is in response to your request for an opinion letter regarding work recesses under paragraph 3(e) of IWC Order 8-80. The relevant facts set forth in your letter are as follows: Your client purchases fresh produce directly from growers who transport the produce directly from the harvest to your facility, where your client's employees clean and pack the produce for distribution to supermarkets and other retailers. The delivery of the produce to your client's facility is under the control of the growers and/or their designated shippers. Based on estimated delivery time(s), your client schedules starting times for the following day. These starting times may vary, depending on the travel time from the field to your location. On occasion the employees arrive for work at their scheduled starting times, but the delivery of the produce has been delayed. You ask whether the client's prior practice of declaring a work recess, and releasing the employees from all duties for a period of not less than one-half hour and not more than two hours, during which time the employees are free to leave the premises, is allowable under paragraph 3(E) of Wage Order 8-80. You state that said work recesses do not occur during meal periods and that no more than two such recesses occur within one shift. You do not state whether the aggregate time of the work recesses exceeds two hours. Paragraph 3(E) provides that the total time of the recesses cannot exceed two hours; two hours for multiple recesses within the same workday¹ would not be allowable under 3(E). You specifically also ask whether your client is required to allow employees to "clock in" and preform a few minutes

¹Paragraph 2(N) of Wage Order 8-80 defines "workday" as any consecutive 24 hour period beginning at the same time each calendar day. The start of a shift can fluctuate, but the start of a workday must be consistent.

Daniel C. Bowen, Esq.

September 11, 1998

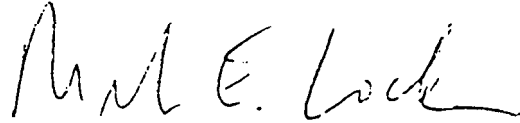
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of work prior to the commencement of the work recess.

Paragraph 3(E) allows the work recesses to be declared during a work day. Thus it would appear that a shift need not actually commence with work being performed before a recess can be called. Please be cautioned, however, that unless every element of paragraph 3(E) is met, the recess time will be treated as hours worked. That is, in order to be excluded from hours worked, the employees must be free to leave the premises during the recess(es), each recess must be no less than one-half hour and no more than two hours in duration, the recess(es) cannot coincide with meal period(s), there cannot be more than two recess periods within one shift, and total duration of all such recesses in any workday must not exceed two hours.

I hope this addresses the questions posed by your letter. If you have further inquiries, please feel free to contact my office.

Very truly yours,

A handwritten signature in black ink that reads "Miles E. Locker". The signature is written in a cursive style with a long, sweeping underline.

Miles E. Locker
Chief Counsel

cc: Jose Millan
Tom Grogan
Greg Rupp
Nance Steffen
George Gomez