

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
225 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102



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Legal Section

IN REPLY REFER TO

July 25, 1988

RECEIVED

JUL 25 1988

Ms. Renee M. Rusch, Esq.
Landels, Ripley & Diamond
450 Pacific Avenue
San Francisco, CA 94133

Labor Standards Enforcement
Administrative Office
San Francisco

Re: Vacation Pay Policy

Dear Ms. Rusch:

The Commissioner has asked me to respond to your inquiry of June 21, 1988, regarding the use of "use it or lose it" vacation policies.

As you point out in your letter, the Labor Commissioner has stated that it is possible to place a ceiling on the accrual of vacation provided the ceiling is reasonable. The rationale for allowing such ceilings to be put on accrual was to encourage employees to take vacations in a timely manner and to allow employers to institute policies which would prevent employees from accruing large amounts of vacation time. Such large accruals of vacation time pose serious problems to production schedules and may place unacceptable restraints on cash flow inasmuch as the vacation time must be paid from current operating expenses.

The policy outlined by the Labor Commissioner in Interpretive Bulletin 86-3 does not place a specific limit on the use of the "cap" or ceiling of vacation accrual because of the varying vacation accrual programs utilized by employers throughout the State of California. The accrual by various employers may be anywhere from one week to as many as five or six weeks per year and "reasonable" limits may vary according to the length of the vacation accrual.

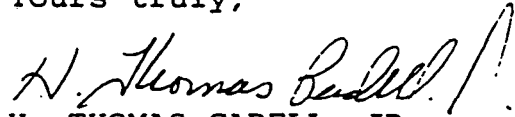
Specifically, you request an opinion as to the reasonableness of a one-year ceiling. We can provide you no "bright line" test on this issue. In certain cases a one-year plan could be reasonable if the plan was uniformly enforced and ample time and choices were given to employees to take their vacation. Frankly, due to the realities of the workplace, it is unlikely that such a policy as you propose could be administered in a uniform manner. Exceptions would be made so that employees could take vacations longer than two weeks or at a time convenient to family schedules. At some time point the exceptions overwhelm the rule and we would ignore the cap and analyze the situation on the basis of continuous accruals.

1988.07.25

Renee M. Rusch, Esq.
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If you have any further questions regarding this issue
please direct them to the undersigned.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr.

1988.07.25