

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENTSanta Rosa Legal Section  
50 D Street, Suite 360  
Santa Rosa, CA 95404  
(707) 576-6788

H. THOMAS CADELL, Of Counsel

December 12, 2002

David Rosenfeld, Esq.  
Van Bourg, Weinberg, Roger & Rosenfeld  
180 Grand Avenue, Suite 1400  
Oakland, CA 94612Re: **Payroll Payment By Cash Dispensing Machine** (00188)

Dear Mr. Rosenfeld:

Chief Counsel Anne Stevason has asked me to respond to your letter outlining a payroll practice which you believe violates California law.

The pay practice you describe in your letter involves "day laborers" who are paid on a daily basis either by regular paycheck or by a special voucher which can be converted into cash only in an employer-leased cash dispensing machine (CDM) accessible only in the employer's office for a few minutes after the voucher issues. There is a fee of \$1.00 charged for the use of the CDM and, in addition, the CDM pays out the funds in bills only so that any coinage is not paid. You state that these temporary workers generally do not have funds sufficient to have bank accounts of their own. Since their pay is not available until after banking hours, the workers opt for the convenience of the CDM as opposed to receiving the alternative payroll check which could not be negotiated until the following business day.

Labor Code § 212 provides, *inter alia*:

"(a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

"(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment."

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DLSE agrees with your assessment that the pay plan you describe violates Labor Code § 212(a) inasmuch as the "voucher" which the employer offers is subject to "discount" when presented for payment.

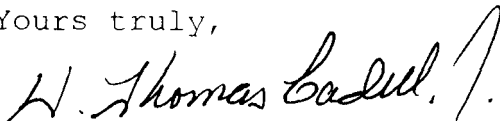
The evidence you rely upon to adopt the view that the practice also violates Labor Code § 221 - which prohibits an employer from collecting or receiving any part of the wage which the employer has paid to the employee - is based on a reading of the firm's financial statement. There is no evidence you submit that directly proves that the CDM fees revenues shown in the financial statement are the result of these payroll charges. If, of course, the employer does receive, directly or indirectly, any part of the charges made by the machine for these purposes, then the provisions of the Section 221 would be impacted.

Even without evidence of a violation of Labor Code § 221, however, there is a clear violation of § 450 of the Labor Code inasmuch as the employer is coercing<sup>1</sup> the employee to purchase a thing of value (the convenience of receiving the cash wage owed the employee for the work performed) from a third party (the person or persons who receive the charges made for the service).

The Division recommends that you have one of the affected employees file a complaint with the local office of the Labor Commissioner concerning this practice.

Thank you for your continued interest in California labor laws.

Yours truly,



H. THOMAS CADELL, JR.

Attorney for the Labor Commissioner

c.c. Arthur Lujan, State Labor Commissioner  
Tom Grogan, Chief Deputy Labor Commissioner  
Anne Stevason, Chief Counsel  
Assistant Labor Commissioners  
Regional Managers  
Lisa Pau

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<sup>1</sup>The word coerce has a recognized meaning of "To domineer or compel by pressure, threats, or force. The word has a different meaning than "require".

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