STATE OF CALIFORNIA   GEORGE DEUKMEJIAN. Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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October 6, 1987

Mr. James E. Boddy, Jr.
Morrison & Foerster
California Center
345 California Street
San Francisco, CA 94104-2105

Dear Mr. Boddy:

    This is in reply to your letter of August 21, 1987 regarding
the applicability of <u>Suastez</u> to a sabbatical leave program which
is available to all employees of a firm.

    After further consideration, the division's position, as set
forth in my letter of July 13th, still stands. Except as set
forth below, a sabbatical leave program available across the
board to all employees is subject to <u>Suastez</u>. In my view, the
chances for avoiding <u>Suastez</u> are too great, and the difficulty of
consistent enforcement too obvious, to warrant a case-by-case
analysis.

    However, an exception can be made for firms which had a
policy that antedated <u>Suastez</u> and which historically offered
sabbatical leaves to employees other than high level managerial
professionals. Such plans must have been in addition to regular
vacation time off. In these situations, the application of
Section 227.3 and the principles of <u>Suastez</u> would result in the
limiting or modification of existing plans which clearly were not
developed and designed to avoid <u>Suastez</u>. Obviously, this would
effect a disservice to the employees covered by the plan.

    Labor Code Section 227.3 mandates the Labor Commissioner to
"apply the principles of equity and fairness" in handling
vacation matters. Since the sabbatical leave plan set forth in
your letter is applicable to all employees but is a pre-existing
plan, it is not subject to <u>Suastez</u>. Of course, if the plan is
changed and is operated in the future in such a way that a
subterfuge to avoid <u>Suastez</u> has been created, the principles of
<u>Suastez</u> would then be applicable.

    I hope this clarifies these issues.

                              Very truly yours,

                              Lloyd W. Aubry, Jr.
                              State Labor Commissioner

LWA/jv

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