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STATE OF CALIFORNIA Pete Wilson, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
L ' Section
3 ın Ness Avenue, Suite 4400
San Francisco, CA 94102

August 30, 1991

Steven W. Brennan
McLaughlin and Irvin
801 So. Grand Ave., 3d Floor
Los Angeles, CA 90017-4621

Re: **Owner-Operator Lease Agreements**

Dear Mr. Brennan:

This letter is in response to your letter of August 22, 1991, regarding the pay arrangements you propose for employee owner-operators.

Initially, I wish to make clear that it is my understanding that the employees own their trucks and are not leasing the equipment from your client. In addition, it is my understanding that the client you represent is engaged in the trucking business and these employees would be performing primarily as drivers subject to PUC regulations delivering goods for third persons and that these employees would perform no other services for your client. The workers, which you stated in our telephone conversation would be subject to the PUC rules found at Title 13 of the California Code of Regulations, Subchapter 6.5, Section 1200 et seq., would be exempt from the overtime provisions (but not the minimum wage and working condition provisions) of the IWC Order 9-90 pursuant to section 3(H).

The proposal would compensate the employee at the rate of $4.35 per hour for all hours worked. In addition, the employee would receive one-half of the compensation received by your client (the trucking broker) less the amount paid as the hourly wage. In the example you give, you assume that an employee works 30 hours in a week and you further assume that the broker receives $500.00 from clients for the trucking services performed by the employee for that week. The employee would be entitled to receive $130.50 in wages ($4.35 x 30). Additionally, the employee would be entitled to $250.00 for the services performed (½ of $500.00 received by the broker) less the amount paid for hourly wages ($130.50) or a total of $250.00.

The Division of Labor Standards Enforcement has adopted an enforcement policy in regard to the use of such equipment as trucks and automobiles based on the provisions of Labor Code §2804. This enforcement policy requires that the employer agree to reimburse

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the employee for all the costs incurred by the employee in the operation of the equipment. (See Interpretive Bulletin 84-7) There does not seem to be any such agreement contained in the proposal you submit. The so-called "lease payments" fluctuate from week to week and are not based upon miles driven or depreciation based on use of the vehicle. There is, consequently, no objective measure of the costs of operating the equipment.

In summarizing this issue, if the pay schedule can be amended to provide for payment of the costs incurred by the worker in using the equipment, the plan would be acceptable based upon the facts you submitted.

You raise a second issue in your letter. You ask whether an employer is required to pay an employee working under the arrangement outlined above who makes a delivery to a customer at the end of the workday for time spent driving home from the customer's location.

Assuming that the pay arrangment can be modified to meet the requirements of Labor Code §2804, the Division policy in this regard is to require that the employee be compensated for any commute time which would exceed his/her normal commute time from home to the regular reporting place. Thus, if the location of the customer's premises were closer to or the same distance from the worker's home than the worker's home to the regular reporting location, there would be no requirement for additional compensation. If, however, the customer's location is further from the worker's home than the distance from the worker's home to the regular reporting location, the employer would be required to pay for the time taken to travel the distance in excess of the distance between the worker's home and his/her regular reporting place.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. James Curry
Simon Reyes
Jose Millan

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