STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
455 Golden Gate Avenue, Room 3166
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H. THOMAS CADELL, JR., *Chief Counsel*

June 21, 1994

Dee Modena
F. B. Hart Company
1441 Richards Blvd.
Sacramento, CA 95852-0588

Re: **Language Contained In Application For Employment**

Dear Ms. Modena:

I have reviewed the proposed employment application you submitted to the Labor Commissioner and, while the Labor Commissioner has no mandate to respond, I felt that I really should comment on the language dealing with the authorization of the employer to investigate the employees references, work record, education and other matters related to the suitability for employment.

The statement authorizing any person to provide the company with relevant information and opinion that may be used in making a hiring decision, standing alone, is no problem; but when the language is tied to the last sentence in that paragraph which purports to be a release by the employee of all parties from any liabilities that may result from such disclosure, the language may be misleading.

Labor Code § 1050 provides that any person who "by any misrepresentation prevents or attempts to prevent" a former employee from obtaining employment is guilty of a misdemeanor. Labor Code § 1054 provides a civil remedy which is available to an employee under those circumstances, and Labor Code § 96(d) mandates the California Labor Commissioner to enforce claims for violation of section 1050.

The California Civil Code, section 3513, prohibits one from waiving the advantages of any law established for a public purpose. The term public purpose has been defined by the California courts: "Legislation which is enacted with the object of promoting the welfare of large classes of workers whose personal services constitute their means of livelihood and which is calculated to confer direct or indirect benefits upon the people as a whole must be presumed to have been enacted for a public reason and as an expression of public policy in the field to which the legislation relates." *De Haviland v. Warner Bros. Pictures* (1944) 67 Cal.App.2d 225, 235.

It appears clear then, that Labor Code § 1050 is a law created for a public purpose and its provisions may not be waived.

While it is not anticipated that your firm would solicit or that the employers you question would furnish misleading information regarding the work history of applicants, this letter is simply meant to caution you, and those employers you deal with, that the waiver contained in the application for employment would have no effect in the event of a misrepresentation.

The fact that this letter addresses only the question of Labor Code § 1050 should not be interpreted to mean that the Labor Commissioner agrees that all of the other provisions contained in the application are enforceable in California courts. Labor Code § 229, for instance, would ostensibly allow a worker to bring an action to recover wages in court despite an arbitration agreement to the contrary. The special circumstances surrounding leading cases on this subject (see *Perry v. Thomas* 482 U.S. 483 (1986); *Gilmer v. Interstate/Johnson Lane Corp.* 500 U.S. 20 (1991)) do not appear to be present here.

Thank you for your interest in California labor laws and for this opportunity to review your proposed application.

Yours truly,

H. Thomas Cadell Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw, State Labor Commissioner