

DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

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IN REPLY REFER TO:

March 16, 1987

Mr. Steven J. Ross  
Executive Vice President  
West Coast Industrial Relations  
Association  
3185 Airway Avenue, Suite J  
Costa Mesa, CA 92626-6699

Dear Mr. Ross:

This is in reply to your letter of March 3, 1987, regarding questions concerning vacation pay under the Suastez decision and our Division's Interpretive Bulletin No. 86-3.

The disproportionate and decelerating accrual of vacation in your paragraph 1. A. B. C. would be violative of the Suastez decision. An employer may establish a plan that gives zero accrual for the first 3 months to all employees provided that any subsequent accrual is in accordance with paragraph 7. of Interpretive Bulletin No. 86-3 and not an attempt to avoid day-by-day vesting.

Paragraph 2. appears to contain a forfeiture which is prohibited by the Suastez decision as employees who pass probation would be given credit for the probationary period whereas those who do not would receive no pro rata share.

The acceptable methods of granting vacation must be based on a proportionate accrual and cannot have a forfeiture component. You may have a plan that accelerates the accrual of vacation provided that it conforms to the principle in paragraph 7.(b) of Interpretive Bulletin No. 86-3. When a plan decelerates vacation accrual, it is our view that the previous period's higher accrual rate was really an attempt to compensate for vacation pay earned in an earlier period.

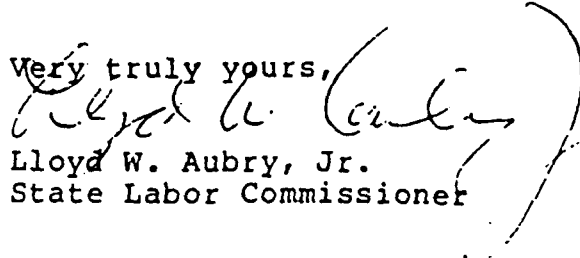
An employer may establish probationary periods where no vacation is earned and the length of such period may be set by the employer. The Division does not set any specific limits on the length of probationary periods (see paragraph 7(a) of our Interpretive Bulletin No. 86-3). Probationary periods may not be used as a subterfuge to deny accrual of vacation pay to those who fail probation as opposed to those who pass probation.

1987.03.16

Mr. Steven J. Ross  
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I hope this is responsive to your questions; if not, please let me know.

Very truly yours,

  
Lloyd W. Aubry, Jr.  
State Labor Commissioner

LWA:sw

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