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VISION OF LABOR STANDARDS ENFORCEMENT
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1988.06.13

Legal Section

June 13, 1988

Karen H. Henry
Weissburg & Aronson, Inc.
555 California Street, Suite 2400
San Francisco, CA 94104

Re: Payroll Deduction Authorizations and State Labor Code Provisions

Dear Ms. Henry:

The Labor Commissioner has asked me to respond to your letter of June 8th requesting an opinion regarding the following issues:

1. Assuming that (a) the affected employees are represented by a labor organization but no current collective bargaining agreement is in effect, and (b) that the employees may elect to have spouse and dependent health coverage, but the employer has conditioned such converage upon employee contributions, and (c) that the employee elects such spouse and/or dependent coverage, then may the employer lawfully require, as a condition to the employee's selection of spouse/dependent coverage, that the employee contribution be made through the execution of a payroll authorization form providing for a deduction from their wages?

2. If an employer requires that employees contribute towards the cost of health care coverage for spouses and dependents, and an employee elects such coverage under such conditions, do the employee contributions constitute an unlawful rebate under the cited Labor Code provisions and the facts described below?

3. Whether the answer to (1) and (2) above would be the same for employees who voluntarily elect an optional health plan which requires contributions for "employee only" coverage as well as higher contributions towards "employee plus one" and "family coverage", and such contributions are again to be made through payroll deduction?

I have had the opportunity to read the material you submitted in support of your position and the additional material I asked you to submit which includes, I understand, all of the pleadings filed by SEIU in both the Superior Court (case number 892456) and the Federal District Court (case number C 88 2014 WWS). I have contacted Mr. Paul Supton and he explained to me that he disputed the facts which I read to him from your letter. I advised Mr. Supton that the opinion to be rendered by this office would be based entirely on the facts you submitted inasmuch as you had requested that the opinion be expedited and we believe that factual determinations are best left in the capable hands of the Federal Court judge.

The Division of Labor Standards Enforcement hesitates to become involved in matters which are currently in litigation in a state superior court or Federal District Court. It is not our intention in responding to your inquiry to judge the facts of the situation you describe; but merely accept the facts you set out as accurate. In addition, the Division makes no representation regarding federal law.

Based upon the above understanding, I will attempt to explain the position of the DLSE in regard to the provisions of Labor Code §§ 219, 221, 222, and 224 given the fact situation you describe.

The provisions of Labor Code §224 were interpreted by the California Attorney General in 1944 wherein the Attorney General stated:

> "Deductions permitted by law and which may be voluntarily requested in writing by the employee are insurance premiums, hospital or medical dues, and other items which are for the benefit of the employee, not the employer." (3 Ops.Atty.Gen. 178)

The key word in the above description is "voluntarily". So long as the employee has voluntarily agreed, in writing, to the deduction, there is no violation of the provisions of Labor Code §224 if the item is for the benefit of the employee and not the employer.

In view of the fact that, according to the scenario you describe, there is no collective bargaining agreement in existence at this time, Labor Code §222 would not apply. The provisions of Labor Code §221 must, according to the California courts, "be read with its companion statutes, and section 224 of

the Labor Code provides in pertinent part that '[T]he provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages...when a deduction is expressly authorized in writing by the employee..." to cover, among other things, insurance premiums. (Prudential Insurance Co. v. Fromberg (1966) 240 Cal.App.2d 185 at 192)

According to the facts you have presented, there is no CBA and the employer has agreed to pay for the insurance coverage of the individual employee. In the event the employee requests the additional coverage of the spouse or other family members, the employer requires the employee to pay for such coverage and further requires that the employee execute a payroll deduction authorization allowing the employer to deduct the additional premium cost. It appears that your clients will not permit payment of the additional premium by direct payment, but require payroll deduction authorization as a condition of enrolling the family members.

In my opinion, Labor Code §224 is not violated as a result of the employer requiring, as a condition of fulfilling the employee's request that his or her spouse or children be added to the insurance coverage, that the payment be made through payroll deductions. The employee is not coerced in any way under those circumstances since he or she may simply elect not to opt for the extended coverage and not sign the authorization. Again, in my opinion, under these specific circumstances, the authorization would be "voluntary".

I hope this adequately addresses the questions you raise in your letter of June 8, 1988, to the Labor Commissioner.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr.
Paul D. Supton, Esq.