

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

45 Fremont Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060H. THOMAS CADELL, JR., *Chief Counsel*

August 25, 1997

Michael G. Dwyer
Jeffer, Mangels, Butler & Marmaro,
2121 Avenue of The Stars, 10th Floor
Los Angeles, CA 90067-5010Re: **Reporting Time Pay**

Dear Mr. Dwyer:

This is intended to reply to your letter of July 16, 1997, wherein you ask:

"If the Company sends employees home early due to their unacceptably poor performance, may the Company pay them only for the actual time working until they are sent home?"

You state that your client employs telephone callers on a part-time, hourly basis to solicit donations for certain non-profit organizations. The shifts occur from 9:30 a.m. to 1:30 p.m. (4 hours), 2:00 p.m. to 6:00 p.m. (4 hours) and 6:00 p.m. to 9:00 p.m. (3 hours). The employees may sign up¹ (agree to work) for no more than two shifts per day (that is, no more than 8 hours daily) without prior supervisor approval.

According to your client's procedures, "[A]ny Caller whose pledge rates and conversation rates are less than the 'house average' are subject to being removed from the telephone calling bank due to their inadequate performance and sent home because of their poor performance. Any such Caller who is sent home for poor performance is paid for the actual time spent up until the moment that they are sent home."

¹You state that "[W]hen the Callers 'sign up' to work a particular shift, they are merely expressing a preference to work during this time." The company then "schedules" employees based on a number of factors.

Opinion/Reporting Time Pay

Re: HCCW 1219

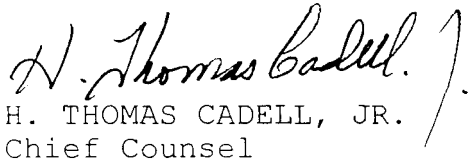
Michael G. Dwyer
August 25, 1997
Page 2

For purposes of this response, I am assuming that the "Caller" is not discharged but is simply sent home at the convenience of the employer because they do not meet the "house average" on that particular day.

Section 5 of IWC Order 7-80 provides that there are three circumstances under which the reporting time pay provisions are not applicable: (1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or (2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or (3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

As you can see, the fact that the employee is not performing as the employer feels he or she should is not a valid exception from the payment of reporting time pay.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Jose Millan, State Labor Commissioner
Nance Steffen, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner
Tom Grogan, Assistant Labor Commissioner