

DEPARTMENT OF INDUSTRIAL RELATIONS

## DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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MILES E. LOCKER, *Chief Counsel*

September 14, 1998

R. Brian Dixon, Esq.  
Littler Mendelson, P.C.  
650 California Street, 20th Floor  
San Francisco, CA 94108-2693

RE: Bonuses Provided in Kind-Labor Code Section 212

Dear Mr. Dixon:

Your letter of August 26, 1998 has been referred to this office. You request an opinion letter with respect to the application of Labor Code Section 212 to bonuses paid in scrip. The facts set forth in your letter indicate that your client has established a written plan under which its store employees are provided with an incentive bonus if the store meet certain preset financial performance targets. Under this plan, employees would be paid with scrip with no intrinsic monetary value which is redeemable only through a catalogue published by a solitary vendor. The scrip cannot be redeemed by the employee for cash, and if the amount of the scrip is insufficient to "purchase" any of the items in the catalogue at the time the employee separates from the employer, the scrip cannot be redeemed.

As your letter notes, Labor Code Section 212(a) provides:

No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument....

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

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Labor Code Section 450 further provides:

"No employer, or agent or officer thereof, or other person, shall compel or coerce any employee, or applicant for employment, to patronize his employer, or any other person, in the purchase of any thing of value."  
[emphasis added]

Bonuses which are not discretionary, including performance based bonuses, have long been considered wages within the meaning of Labor Code §200, payment of which is subject to the provisions of Labor Code §212. Thus it appears that the facts set forth in your letter violate California labor statutes on several fronts. The use of scrip is specifically prohibited, as is the requirement that the bonus be used to patronize the selected vendor in order to receive any value from the scrip. The instrument by which the employees are paid must be redeemable in cash, not in kind, and payable on demand at a California institution identified on the face of the instrument. And, of course, your representation that the catalogue vendor has similar arrangements with other employers in California has no bearing on the legality of the practice.

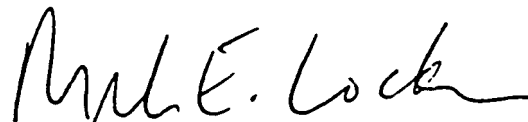
You also ask whether the employer's payment, upon demand, of a nominal cash value for the scrip ("a small fraction of the value of the scrip if it were to be used to acquire merchandise") would remedy any potential violation of Section 212. Insofar as Section 212 requires that the instrument by which employees are paid be "negotiable and payable in cash on demand, without discount" [emphasis added], this proposal also runs afoul of the law.

As to your question regarding the practice of unspecified employers providing rewards to top sales personnel by means of trips to Hawaii, you do not specify, although it would appear to be the case, that there is no irrevocable entitlement to the trips based on set percentages or volume of business. Without more specifics, it would be impossible to determine whether such trips are discretionary bonuses as opposed to wages subject to §212.

R. Brian Dixon, Esq.  
September 11, 1998  
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I hope this addresses the questions raised by your letter. If you are in need of further information, please contact the undersigned.

Very truly yours,

A handwritten signature in cursive script that reads "Miles E. Locker". The signature is written in dark ink and is positioned above the typed name.

Miles E. Locker  
Chief Counsel

cc: Jose Millan  
Tom Grogan  
Greg Rupp  
Nance Steffen

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