

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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

October 21, 1997

Donald H. Maffly
Chandler, Wood, Harrington & Maffly
111 Sutter Street, Suite 1900
San Francisco, CA 94104Re: **Payroll Service Program For Truck Drivers**

Dear Mr. Maffly:

This letter is in response to your latest letter, dated August 29, 1997, regarding your client's proposed program to provide a payroll service for over-the-road truck drivers.

As you explained, the payroll delivery service is offered to companies that employ truck drivers who are often on the road in California and other states and have a need to receive a portion of their wages in a convenient manner while they are on the road and also have a need to have all or a portion of wages made available to the driver's spouse to provide for the household and to pay monthly bills. Obviously, truck drivers engaged in over-the-road transportation have unique needs and in order to meet these needs the Division has agreed to review your client's payroll delivery service as that system applies to these drivers.

As you will remember, my concern in the past discussions we have had on this subject is that Labor Code § 219 clearly provides that "no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied." Based on this clear statutory language, I felt that I had to reassess my statement to you that so long as one of the methods were permissible, the employer could contract with the employee to, in effect, waive the provisions of Labor Code § 212.

However, in response to my concerns, you have made it clear that your client's proposal allows all or any portion of wages earned by the driver to be transferred by direct deposit to the

Donald H. Maffly
October 21, 1997
Page 2

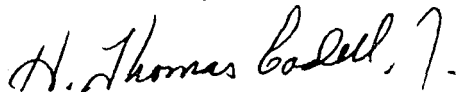
driver's bank account and also allows all or any portion of those wages to be distributed to the driver while on the road both through ATM machines (which have limited amounts which can be recovered in any one day) and through drafts which may be presented to service centers under contractual arrangement with your client. You have assured me that there is no charge incurred by the employee for the use of the draft process. These drafts, of course, could be in payment of all sums held in the employee's wage account¹ and may be negotiated at a bank in the State of California with which your client maintains an account. The employee is, thus, guaranteed instant cash on demand at any time for the full amount of wages loaded into his or her settlement account.

The employee may, of course, also choose to have all or any portion of his wages deposited directly to his own bank account.

This letter assumes that your client's payroll practice meets any requirements imposed by applicable statutes or regulations of the State of California dealing with banking and trusts.

Based upon the above, it is the opinion of this office that your client's payroll delivery service as described in your letter and in this letter, meet the requirements of Labor Code § 212(a) for use in the unique circumstances found in the over-the-road trucking industry.

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

¹As you explained, the amount of cash available at any service center might limit the amount that the employee would be able to withdraw; but the "draft" could be deposited by the worker in his own bank account.