

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

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IN REPLY REFER TO:

May 14, 1987

Richard S. Rosenberg, Esq.
Ballard, Rosenberg & Golper
1900 Avenue of the Stars
Suite 2300
Los Angeles, CA 90067

Dear Mr. Rosenberg:

This is in reply to your letter of April 27, 1987, regarding the application of the Suastez decision to an employer who does not offer a paid vacation, but permits employees to take time off without vacation pay.

The Suastez decision gives an employee the right to a paid vacation as deferred wages for services rendered when the paid vacation is offered in an employer's policy or contract of employment. As I understand it, under your client's employment agreement, no paid vacations are offered; however, the client permits the account representatives to take time off by mutual agreement.

During such time off, the account representative would continue to receive payment of any commissions that would come due during the time off. However, this is really compensation earned while working and not vacation pay.

It is my opinion that the Suastez decision would not apply to employees covered by this agreement or arrangement, as no paid vacation is offered, and there is a clear meeting of the minds that any time off is without vacation pay.

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

Very truly yours,

Lloyd W. Aubry, Jr.
State Labor Commissioner

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