STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
SECTION
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H. THOMAS CADELL, JR., *Chief Counsel*

December 18, 1992

Richard J. Simmons
Musick, Peeler & Garrett
One Wilshire Blvd.
Los Angeles, CA 90017-3321

Re: **Direct Deposit Systems**

Dear Mr. Simmons:

The Labor Commissioner has asked me to respond to your November 6, 1992, letter to Senior Deputy Jose Millan who was, at that time, attached to the Headquarters Staff.

Your questions revolve around the issue of Direct Deposit of paychecks in the bank of the employee's choice. As I understand the facts, your client's employees are provided with the option to either (a) receive a paycheck or (b) receive their wages through an automatic electronic payroll deposit system. Generally, the amount necessary to cover the wages for the weekly period are deposited by your client on Tuesday of the following week and are generally deposited by the Federal Reserve System in the employee's bank account on the following Friday. There are times, however, when, although your client has irrevocably paid the amount into the Federal Reserve System in what would normally be a timely manner, the funds are not deposited and/or available to the employee's account until the following Monday as a result of intervening holidays.

As you point out, Labor Code §204 provides that wages earned on a weekly basis must be paid within seven days of the close of the weekly payroll period. Your concern, therefore, is that the failure to have the money available in the employee's account within the seven-day period would put the employer in violation of Labor Code §204 and subject to penalties under §210.

Your letter indicates that the employer offers a choice to the workers: either receive their wages by check paid at the employer's premises or, upon written authorization of the employee, receive the payment of wages through the direct deposit method. Obviously, in the event that the payment of the wages is to be made by check, the amount to cover those wages would have to be available in the payroll account of the employer on the day the check is due. Thus, if the employer failed to consider the effect of the holiday on

banking, the fact that a holiday intervened and the account did not contain sufficient sums to meet the payroll check would not be a valid defense. However, you ask us to conclude that because the employer fails to take cognizance of the fact that a holiday intervenes in a case where it is the employee's account to which the pay is deposited would make a difference.

The written authorization of the employee to receive his or her regular wages through the direct deposit method would amount to an approval by the employee of the use of the system and an assumption of the risk that the wage may be delayed as a result of bank error. Thus, if the employer pays the wage into the Federal Reserve System in a timely manner any unforseeable delay after that time would be the result of bank error and the employer would not be responsible for the delay in view of the fact that the employee accepted that risk.

However, where the delay is the result of a forseeable event (i.e., an intervening holiday) the employer must meet the requirements of the law.

Your second question involves what happens regarding the payment of final wages owed to a worker who has authorized direct deposit in the event of termination. As you point out, Labor Code §213(d) allows the use of direct deposit accounts, but adds the following language:

> "If an employer discharges an employee or the employee quits such voluntary authorization for deposit shall be deemed terminated and the provisions of this article relating to payment of wages upon termination of employment shall apply."

You have suggested in your letter that since in many cases the process of transmitting the employee's wages is often initiated before the termination, it would be inequitable to require the employer to pay the worker all the wages due because he would be paid twice for some of the wages.

While we can understand your client's concerns in this regard, the Legislature has obviously considered this problem and has reached the decision that upon termination not only is the authorization terminated, but that all of the provisions relating to payment of wages upon termination of employment shall apply. If all the legislation provided was that termination of employment equated to "termination of authorization", one could argue that since the "authorization" was effective at the time the money was irrevocably put out of the hands of the employer the authorization would protect the employer. But, when the Legislature added the provision "...and the provisions of this chapter relating to payment of wages upon termination of employment shall apply" it is clear that the the Legislature intended a different result.

In regard to this matter, I have spoken to several attorneys experienced in the banking industry and they assure me that a direct deposit may be cancelled upon less than 24-hours notice. They suggest that you or your client review the California Automated Clearinghouse Rules in this regard.

Despite these assurances, we are sure that your client will continue to have concerns. In your letter you suggest applying equitable principles in situations such as you describe. However, it is well-settled law that the principles of equity cannot be substituted for statutory mandates.

We suggest that you may want to approach the Legislature regarding this matter. However, absent an amendment to the current law on this subject, we must enforce the statute as it is written.

I am sorry that we can not be of more assistance to you and your client. Thank you for your continued interest in California labor laws.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw