STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor

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IN REPLY REFER TO:

November 4, 1986

Mr. Michael J. Breining
General Counsel and
Vice President, Operations
California Manufacturers Association
P.O. Box 1138
Sacramento, CA 95805-1138

Dear Mike:

This is in reply to your letter of October 23, 1986, requesting a review of an employer's policy with respect to the recent Suastez decision.

In my view, flexible time off (FTO) is subject to the Suastez decision. Under the policy, the employer permits the use of FTO at the employee's discretion; i.e., it can be used for vacation, sick leave, or personal business, and there is no differentiation between sick leave and vacation or personal time off. This policy is really no different than the paid days off policy described in paragraph 8 of the Suastez Interpretive Bulletin.

The FTO schedule also limits the time off that can be carried over to an amount that is less than the amount earned and, therefore, would be violative of the Suastez decision. (See the Interpretive Bulletin, paragraph 6, which states that earned vacation cannot be forfeited.) By denying the right to carry all the earned time forward or "cashing it out", the employer is requiring the employee to forfeit a portion of the accrued time.

I hope this answers your questions. If not, please let me know.

Very truly yours,

Lloyd W. Aubry, Jr.
State Labor Commissioner

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