

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
30 Van Ness Avenue, Suite 4400
San Francisco, CA 94102



June 19, 1991

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

Re: **Use of 9/80 Schedule Under Wage Order 1-89**

Dear Mr. Simmons:

Your letter of June 10, 1991, addressed to Jose Millan, Senior Deputy, San Francisco Headquarters Office, has been referred to this office for response.

In your letter you ask for confirmation of information received from Mr. Millan in a recent telephone conversation and ask for an opinion from the Division regarding the permissibility of a "9/80" alternative workweek schedule under Wage Order 1-89. As you indicate in your letter, Mr. Millan explained to you that Division policy has for some time allowed the use of the 9/80 scheduling arrangement.

The first two pages of your letter in numbered section "1" outlines the provisions of IWC Order 1-89 and sets out what you consider to be a justification of the enforcement position which the DLSE has taken in regard to the 9/80 alternative schedule. In the first paragraph of page three of your letter you describe the proposed schedule:

Calendar Days

Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu
8	0	0	9	9	9	9	0	0	0	9	9	9	9

Under the proposed schedule, the workday for affected employees would run from 11:00 a.m. until 11:00 a.m. the next day. The workweek would begin at 11:00 a.m. on Friday of each week and end 168 hours later, at 11:00 a.m. the next week. The eight hours of work that fall on Friday of every other week would be divided by the workweek so that four hours would fall into one

workweek and four into the other¹ Under this arrangement, therefore, the employees would work 40 hours in each workweek and no less than four hours on any one workday within the workweek.

In page one of your letter, you mention specifically that it is important to note that "Section 3(B)(2) refers to the term 'two consecutive days off' rather than two consecutive 'workdays' off." You note further that the term "two consecutive days off" is also included in the Statement as to the Basis of the Order. You further mention this point in the paragraph on page three in which you describe the proposed schedule.

I mention this fact only because it is my understanding that in your telephone conversation with Mr. Millan you at first indicated that you felt that the DLSE's adoption of this enforcement policy violated the provisions of the Order because the 9/80 alternative schedule which the Division permitted did not provide for "two consecutive workdays" off. I assume from your discussion of this point in your letter that you understand the rationale used by the Division in reaching the conclusion that the 9/80 arrangement was permissible.

The remainder of page three and all of page four of your letter continues your discussion of why you feel the DLSE was justified in adopting the 9/80 regularly scheduled alternative workweek. You ask for no comment on your discussion of the justification and we, consequently, do not feel it necessary to do so.

I am attaching two opinion letters from the many we have sent out on this issue over the past year. The letter dated July 25, 1990, signed by James Curry, Acting Labor Commissioner, is the earliest correspondence I can find on this subject. I believe that these letters will answer any questions you may have regarding the enforcement posture taken by the DLSE in regard to the 9/80 workweek and the rationale for the adoption of that policy.

I am concerned that you were not aware of this enforcement policy. My concern is heightened by the fact that you were kind enough to send me a complimentary copy of your 1991 Supplement to your Wage and Hour Manual and in the cover letter invited me to contact you if I had any questions on the contents. In my response thanking you for your thoughtfulness, I'm afraid I failed to note that the Supplement did not contain any reference

¹ Under the plan permitted by the DLSE, the work schedule (under the arrangement you have outlined) would have to begin at 7:00 a.m. so that four hours could be worked in one workweek every other Friday and four hours in the next workweek on the same day. It is difficult to imagine how you could structure the scheduled hours any differently but if you have another work schedule in mind you should contact this office before implementing the program.

RICHARD J. SIMMONS, ESQ.
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to the 9/80 workweek enforcement policy adopted by the Division. I apologize for this oversight. May I suggest that you may wish to discuss, in detail, changes and additions to the DLSE policies with our staff here in headquarters.

I should add that the Division's enforcement policy and its interpretation of the workweek arrangement is based entirely upon our interpretation of California law. You may wish to contact the U.S. Department of Labor regarding its interpretation of the Fair Labor Standards Act in connection with "workweeks".

Thank you for your continued interest in matters of mutual concern. If we can be of any assistance in explaining the Division's enforcement policy on this or any other issue, please feel free to write.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. James Curry
Jose Millan