STATE OF CALIFORNIA PETE WILSON, Governor

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

January 2, 1997

Robert S. Boulter, Esq.
665 Montgomery St., Suite 940
San Francisco, CA 94111

Re: **Requested Interpretation of Labor Code § 450**

Dear Mr. Boulter:

This is in response to your letter of December 20, 1996, wherein you ask for an interpretation of Labor Code § 450 in regard to the following situation:

> "An employer hires a sales employee and requires him to purchase a customized truck for about $50,000.00, bearing the employer's name, as a condition of employment. The employer then directs the employee to the vendor who sells the trucks and to a leasing company that will finance the truck. Finally, the employer directs the employee to an insurance company that will insure the truck.

You ask whether section 450 prohibits the employer from requiring the employee to patronize specific and identifiable "third persons" or is the statute a more general prohibition prohibiting the employer from requiring the employee to patronize any third person for the purchase of anything of value? You also ask what the result would be if the employer gives the employee a choice between two or three persons from which the purchase items of value?

Labor Code section 450 provides:

> No employer, or agent or officer thereof, or other person, shall compel or coerce any employee, or applicant for employment, to patronize his employer, or any other person, in the purchase of any thing of value.

California courts have determined that Labor Code § 450 is plainly part of 'the established policy of our Legislature of

protecting and promoting the right of a wage earner to all wages lawfully accrued to him.' *California State Restaurant Association v. Whitlow* (1981) 58 Cal.App.3d 340, 347. That same court noted that "Employers cannot be permitted to evade the salutary objectives of the statute by indirection." *Id.* at 348.

Clearly, a condition of employment which requires the employee or applicant to make a $50,000.00 purchase of a vehicle which advertises the name of the employer and further requires that the vehicle be purchased from one vendor (or any number of vendors) chosen by the employer is violative of Labor Code § 450[1].

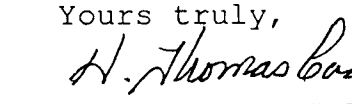
While your letter does not address the question, I feel that it is imperative that you also consider the provisions of Labor Code § 2802 which provides:

> An employer shall indemnify his employee for all that the employee necessarily expends or loses in direct consequence of the discharge or his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

The above provision may not be waived. (See Labor Code § 2804) Obviously, even if the practice you describe were not prohibited by the terms of Labor Code § 450, the employer would be liable to the employee for the costs incurred by the employee under Labor Code § 2802.

Quite frankly, the scenario you paint is usually the type of arrangement made in franchise situations, but the requirement to purchase something of value may not be extended to employer-employee situations, is, in my opinion, clearly prohibited by California law.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

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[1]This letter does not address the question of the insurance required by the employer. There is insufficient information available to determine whether the insurance is designed to protect only the employee and the investment he or she must make, or whether, more likely, the insurance is designed to protect the employer as well. In either event, the requirement would be invalid and the sum expended recoverable.