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DIVISION OF LABOR STANDARDS ENFORCEMENT***Headquarters Office*

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*Office of the
State Labor Commissioner*

July 31, 1998

RE: Payroll: Deductions: 224

Thank you for your letter of July 23, 1998, in which you request an opinion regarding lawful pay deductions via telephone or computer transmission, and whether these types of transactions comply with the requirement pursuant to Labor Code § 224 of an employer first obtaining a written authorization from an employee before making such deductions from their wages.

The question you present is a novel one, and it provides us with a dilemma, inasmuch as we are charged with the strict enforcement of this law, which obviously pre-dates the tremendous advances in technology, particularly in human resources software, that have occurred within the last few years.

In 1991, while dealing with a similar issue dealing with the storage of payroll records under Labor Code § 1174, former Acting Labor Commissioner Curry opined that an employer may collect and maintain computerized payroll information at an out of state location, notwithstanding the requirements of Labor Code § 1174 that such records be maintained at a central location within California. Acting Commissioner Curry believed that inasmuch as the storage of payroll records on computer disks was not fully contemplated at the time these laws were drafted, a reasonable accommodation was necessary to allow for the current needs of California employers, so long as a hard copy of the records was maintained at a central location within California.

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I fully agree with this positive approach to harmonize the requirements of state law with the modern employment practices that employers often turn to in order to improve their efficiency. Nevertheless, I believe it would be helpful first to go over the requirements of Labor Code § 224, in order to ascertain the purpose behind the requirement that the authorization from an employee be first obtained in writing by the employer.

Our enforcement history with respect to interpreting the provisions of Labor Code § 224 requires us to read its requirements in conjunction with the requirements contained in companion statutes contained in Labor Code §§ 221 - 223. Obviously, all of these provisions deal with an employer's obligation to deal fairly and honestly with their employees in connection with the payment of their wages. Thus, while an employer is required to make lawful payroll deductions from employees' wages, those deductions may not amount to a kickback of wages owed to an employee (Labor Code § 221); or to withhold wages agreed upon through collective bargaining (Labor Code § 222); or to deduct from the wages owed to an employee or applicant for employment the cost of any pre-employment physical or medical examination taken as a condition of employment (Labor Code § 222.5); or to make a secret payment of a wage that is lower than the wage rate agreed upon by contract with the employee, or that is required by statute, e.g., minimum wage (Labor Code § 223).

Consequently, the requirements of Labor Code § 224 are apparently designed to eliminate a fraud being perpetrated on an employee, by preventing an employer from being able to deduct from an employee's wages anything other than those items that the employer is obligated by law to make, or for which the employee is to receive as part of his or her benefits compensation package, such as for medical, dental, vision, and any other deductions that the employee cares to authorize the employer to deduct from their wages. The added requirement in this Labor Code section that such authorization be made expressly to the employer by the employee in writing, we interpret was intended to prevent an employer from making an otherwise lawful deduction from the wages of an employee without first obtaining the express authorization of the employee.

That being the case, we find that the security precautions that you have outlined in your letter – by first assigning a unique identifier/password, verified with personal information about the employee so that only that employee may access his or her benefits account – on the whole meets the exacting express authorization requirements outlined in the Labor Code. We would caution, however, that in addition to the confirming telephone and/or computer message, advising the employee of his or her selection at the time it

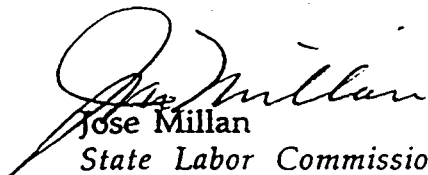
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is being made, that a hard copy of this confirming message also be sent to the employee. This would confirm to the employee his or her selections from the benefits package, so as to allow the employee an opportunity to correct any information that may have been inadvertently transmitted to someone who may have obtained access to his or her personal identifier code, without their knowledge or authorization, as well as to allow for the correction of such misinformation.

Finally, I have also forwarded your letter to our department's legislative unit for possible future legislation in this area in the near future so as to update this section of the Labor Code in order to take into account the advances of technology in this area, and to eliminate the possibility of any future misinterpretation of the statute.

I hope that the foregoing information has been of assistance to you. Thank you for your inquiry.

Sincerely,



Jose Millan
State Labor Commissioner

cc: John Duncan, Director
Terry Miller, Assistant Director, Legislation
Chief Counsel
Assistant Chiefs