STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
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MILES E. LOCKER, *Chief Counsel*

September 11, 1998

Sunil Lewis Vatave, Esq.
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610 Newport Center Drive

RE: Request for Opinion Letter, Charging Applicants for Training

Dear Counsel:

This is in response to your request for an opinion letter regarding charging a training fee to applicants. The facts set forth in your request are as follows: Prospective telemarketing employees are offered a job only upon satisfactory completion of the training class, which is conducted by the prospective employer, not an outside school. Applicants are not required to take the class, but are advised they will not receive an offer of employment (absent demonstration of substantial sales experience) unless they take the class. The training fee is waived if the applicant becomes an employee and remains in the employ of the employer for at least five days.

The criteria normally employed by DLSE to determine whether a training class would not constitute hours worked for which wages are due are set forth in "California Employment Law", Wilcox, Section 1.04[1][f]. Historically, DLSE has required that training, to be exempt from hours worked, and thus non-compensable, be an essential part of an established course of an accredited school or an institution approved by a public agency to provide training for licensure or to qualify for a skilled vocation or profession. A course which is specifically tailored to practices used by the employer would not qualify. Additionally, the work performed by the applicants during the training cannot be work which would have otherwise been performed by bona fide employees (marketing to an actual consumer). Also, it appears from your letter that the screening process for admission to the program, if not identical to the screening process for employment, is inextricably intertwined, and that successful completion of the training entitles the applicant to employment. Any one of the above would render the training program ineligible for exemption from being considered hours worked. Thus the "trainees" would be considered employees, and must be compensated, rather than charged for time spent in such training.

Additionally, Labor Code Section 300 prohibits assignment of wages unless a detailed set of required elements are set forth in writing, including the requirement that the assignment is voluntary and revocable, neither of which appear to be satisfied by the scenario set forth in your letter.

Labor Code Section 450 specifically provides that no employer or agent thereof, shall compel any employee *or applicant for employment* to patronize his employer or purchase anything of value. To the extent the training has any purported intrinsic value, Labor Code Section 450 prohibits your client from charging prospective employees to pay for the training.

Turning to your question concerning the applicability of Labor Code Section 224, the statute does not permit an employer to make an otherwise unlawful deduction from an employee's wages, even if written authorization for such a deduction has been obtained. Put another way, Section 224 only authorizes lawful deductions from wages; the deductions you proposed do not fall into that category.

I hope this addresses the questions posed by your letter. If you have further inquiries, please feel free to contact my office.

Very truly yours,

Miles E. Locker
Chief Counsel

cc: Jose Millan
Tom Grogan
Greg Rupp
Nance Steffen