

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENTSanta Rosa Legal Section  
60 D Street, Suite 960  
Santa Rosa, CA 95404  
(707) 576-6788H. THOMAS CADELL, *Of Counsel*

June 13, 2002

Don D. Sessions, Esq.  
23456 Madero, Suite 170  
Mission Viejo, CA 92691Re: **Salesperson Exemption**

Dear Mr. Sessions:

Anne Stevason, Acting Chief Counsel of the Division, has asked me to respond on behalf of the Division of Labor Standards Enforcement to your letter of March 27, 2002.

In your letter you analyze the coverage of IWC Order 7 and conclude that the order may not cover insurance sales under the definition of "commodities". Based on the enforcement position taken by the Division of Labor Standards Enforcement<sup>1</sup> (DLSE), it is true that Order 7 was never intended to cover such activities as real estate or insurance sales. The occupation of insurance sales (along with many other "semi-white collar" positions) was, for enforcement purposes, covered under the provisions of Order 4. The IWC was aware of this enforcement position and, as a result of pressure from similarly-situated sales-related businesses, added the language which is contained at Section 3(D) of Order 7-2001 to Order 4 (see Section 3(D) of Order 4-2001) in 1980.

Your argument regarding whether the insurance agent<sup>2</sup> is being paid a commission or, as with an attorney, accountant, or trusted advisor, is receiving a fee for professional services, while interesting, is not persuasive. Actually, the fact that since the insurance agent is not covered under Order 7, but under Order 4, your detailed analysis of "wholesale vs. retail" and "goods or commodities" is, of course, irrelevant.

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<sup>1</sup>This includes the enforcement history of the predecessor Division of Industrial Welfare (DIW) which originally had enforcement jurisdiction over the IWC Orders. DIW and the former Division of Labor Law Enforcement (DLLE) were merged in 1976 to form the present DLSE.

<sup>2</sup>You should note that among the workers specifically covered under the provisions of Wage Order 4 are "agents". (See IWC Order 4-2001, Section 2, Definition of "Professional, Technical, Clerical, Mechanical, and Similar Occupations.")

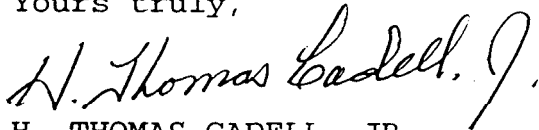
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We are not sure if your seemingly rhetorical question regarding whether the commission paid to insurance agents is, indeed, commission, needs an answer. Your question assumes, correctly or not, that insurance agents are different from other salespeople. We would simply point out that the fact that real estate agents are likewise licensed and also owe a fiduciary duty to their client does not affect the fact that the compensation they are paid is a commission.

In the case of *Keyes Motors v. DLSE* (1987) 197 Cal.App.3d 557; 242 Cal.Rptr. 873, the court concluded that in order for a compensation scheme to constitute "commission wages" within the meaning of the overtime compensation requirements of the IWC Orders, employees must be involved principally in selling the product or service, not making the product or rendering a service; and the amount of the employee's compensation must be a percent of the price of the product or service. In our experience, we have found that insurance sales commissions meet these requirements.

We hope this adequately addresses the questions you raise in your letter of March 27, 2002. Thank you for your interest in California labor law issues.

Yours truly,



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Attorney for the Labor Commissioner

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Tom Grogan, Chief Deputy Labor Commissioner  
Anne Stevason, Acting Chief Counsel  
Assistant Labor Commissioners  
Regional Managers

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