STATE OF CALIFORNIA GRAY DAVIS, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
Santa Rosa Legal Section
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H. THOMAS CADELL, *Of Counsel*

June 24, 2002

LaVerne David
Strategic Business Partners, Inc.
15068 Rosecrans Ave., #318
La Mirada, CA 90638

Re: **Labor Code Section 233**

Dear Ms. David:

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 4, 2002 regarding the above-referenced topic.

1. Your first question asks whether the provisions of Labor Code § 233 apply to public employers such as municipal corporations.

   The provisions of Labor Code § 233(b)(2) defines "employer" for purposes of the section and clearly indicates that the legislation was designed to include the "state, political subdivisions of the state, and municipalities." In the view of the DLSE, this broadly worded coverage includes all public entities in California.

2. Next you ask whether the section applies if there is an existing labor agreement in place that discusses sick leave.

   There is no exception for collective bargaining situations in the statute and, inasmuch as the provisions of the section are clearly intended to constitute a state mandated minimum standard, the enforcement would not be pre-empted by the National Labor Relations Act. (See *Livadas v. Bradshaw* 521 U.S. 107, 114 S.Ct. 2068 (1994))

3. You ask how would Labor Code § 233 apply if:

a. The company is a public corporation and employees are covered by a collective bargaining agreement.

b. Employees accumulate 8 hours vacation[1] per month.

c. During the year 2001, an employee does not use any sick leave; therefore, he/she has accumulated 12 days sick time.

d. In January of 2002, the employee asks for 6 days of Kin Care.

You then ask whether the employer should take into consideration the accumulated sick time from 2001, which would be available for the employee's own illness, and grant the 6 days of use as Kin Care. The answer is yes.

The Legislative Analyst's report attached to AB 109 provided:

> "This bill would require an employer who provides sick leave, as defined, for employees to permit an employee to use in any calendar year accrued sick leave, in an amount not less than the amount earned during 6 months' employment, to attend to the illness of a child, parent, or spouse of the employee."

In the opinion of the Labor Commissioner, the legislative intent of Section 233 was to insure that in the event an employer had a sick leave policy in effect, time for caring for family members was provided in the same manner as sick leave time which arises as a result of the employee himself being ill, with the exception, of course, of the limit on the amount of accrual which may be taken in any one year.

We hope this adequately addresses the questions you raised in your letter. Please excuse the delay in responding, we hope that such delay has not greatly inconvenienced you.

Yours truly,

H. THOMAS CADELL, JR.
Attorney for the Labor Commissioner

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[1]We assume for purposes of this question that you mean "sick leave" not acation, since vacation is accrued under the provisions of Labor Code § 227.3 and, under California law, is vested and cannot be forfeited.

c.c. Arthur Lujan, State Labor Commissioner
Tom Grogan, Chief Deputy Labor Commissioner
Anne Stevason, Acting Chief Counsel
Assistant Labor Commissioners
Regional Managers