STATE OF CALIFORNIA GRAY DAVIS, Governor

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

December 4, 2002

Laura Lough, Esq.
American Payroll Association
30 East 33rd Street
New York, NY 10016-5386

Re: **Electronic Delivery of Pay Stubs** (0091931

Dear Ms. Lough:

This is in response to your letter directed to Anne Stevason, Chief Counsel of the Division of Labor Standards Enforcement. Ms. Stevason has asked me to respond to the questions you raise in your letter.

Labor Code § 226(a) states:

"(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

> "The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.
> "An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by this section shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.
> "This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant."

You state that there appears to be some confusion regarding whether or not the State of California allows employers to electronically deliver pay stubs to employees.

Based on an Opinion Letter written by then Chief Counsel Miles Locker, dated July 19, 1999, to Senator Richard Rainey and Assemblywoman Lynne Leach, you conclude that pay statements may be electronically delivered in California as long as the specific conditions outlined in that letter are met. You point out that Labor Code § 226 was amended by AB 2509 effective January 1, 2001, but that the amendments would not appear to change the conclusions reached in the Opinion Letter dated July 19, 1999.

We agree that so long as the specific conditions outlined in the Opinion Letter dated July 19, 1999, are met, electronically delivered pay stubs will meet the requirements of California law. We feel that it is important that we review the conditions imposed in the July 19, 1999, correspondence.

Initially, DLSE required employees who are hesitant to use computers or who have privacy concerns about electronic data, or who simply believe that their own record keeping needs would be better served by traditional paper wage deduction statement, must have the unfettered option, under Labor Code § 226, to receive the information in a non-electronic form.

For those employees who choose to receive the information electronically, the DLSE required the employer[1] to set up a system that would represent each worker's paycheck electronically, with the electronic representation of each paycheck available from an internet web site managed by the payroll company as a service to its customers.

According to the proposal, the web site would be secure using industry standard security and encryption technology. Employee access would be controlled through the use of unique employee identification and confidential personal identification numbers. Firewalls would be implemented to prevent unauthorized access to this information. The proposal also offered access to the website using properly configured web browsers through terminals located at the work site and from home computers with configuration being made available to employees to allow access. The service would be available 24/7 with the exception of occasional downtime to permit standard system maintenance. At work, every employee would have access to either an individual or network printer[2] at all reasonable hours throughout the day with no more than a minimal delay to enable each employee to print the electronic check/paystub image at no cost to the employee.

The proposal accepted by DLSE required that the employer who elects to comply with Labor Code § 226 by offering electronic wage deduction statement make all of the information required under that statute available to employees for downloading and printing for no less than three years as required by statute.

DLSE will approve any program which meets the specific terms set out in this letter. However, since every program contains nuances, the Labor Commissioner must insist that any employer proposing to use new technology must first seek specific DLSE approval before instituting the program in California. In view of the many nuances, blanket approvals are not possible. We reserve judgment on the statements in your letter to the effect that APA members have been told DLSE has a total ban on such programs.

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[1]The employer may delegate the procedure to a payroll company which would act as the agent of the employer. However, it must be noted that the employer is ultimately responsible for meeting the requirements of the law and may not delegate this responsibility.

[2]DLSE takes the position that it is not necessary that each employee have access to his or her own personal computer. If printing the payroll data is to be accomplished on networked printers, the printer must be secure so as to prevent others from printing the employee's personal data and the employee must be situated close enough to the network printer to eliminate any risk that the data, once printed, can be taken by someone else.

In order to alleviate any confusion by DLSE staff concerning the position of the Division on this issue, Chief Counsel Stevason has asked me to assure you that a copy of this letter will be disseminated to all offices.

Thank you for your continued interest in California labor law.

Yours truly,

H. Thomas Cadell, Jr.

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Attorney for the Labor Commissioner

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