STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
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.. THOMAS CADELL, JR., *Chief Counsel*

1995.11.01

November 1, 1995

William J. Emanuel
Morgan, Lewis & Bockius
801 South Grand Ave., 22nd Floor
Los Angeles, CA 90017-4615

Re: **Meal Period - Bono Enterprises**

Dear Mr. Emanuel:

The Labor Commissioner has asked me to respond to your letter of May 31, 1995, regarding the application of the Bono Enterprises rule to situations in the health care industry. We believe that your analysis is correct. The language adopted by the Industrial Welfare Commission to cover the health care industry (as that term is defined) which provides that the term "hours worked" is to have the same definition as that term has under the Fair Labor Standards Act.

Unlike the meaning of "hours worked" which is specifically defined under the Industrial Welfare Commission Orders, the federal courts have chosen to define the term for purposes of the FLSA much more restrictively. As you point out, the U.S. Department of Labor's regulations (29 C.F.R. § 785.19(b)) provides employers with the right to require workers to remain on the employers premises during meal periods if the employee is "otherwise completely freed from duties during the meal period."

I hope this adequately addresses the question you raised in your letter of May 31, 1995.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. All Assistant Labor Commissioners

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WILLIAM J. EMANUEL
DIAL DIRECT (213) 612-2550

May 31, 1995

Victoria Bradshaw
State Labor Commissioner
P.O. Box 420603
San Francisco, California 94102

Re: Ruling Request - Meal Periods

Dear Ms. Bradshaw:

This is a request for a ruling concerning the proper interpretation of Section 11 of Wage Order 5-89, pertaining to meal periods. The issue is whether an employee in the health care industry must be paid for a meal period if the employer requires the employee to remain on the employer's premises during that meal period.

Section 11 of the Wage Order states as follows in relevant part:

> Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked.

Section 2(H) of the Wage Order states as follows in relevant part:

> Within the health care industry, the term "hours worked" means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, <u>as interpreted in accordance with the provisions of the Fair Labor Standards Act</u>.

(Emphasis addded.)

The regulations of the Wage-Hour Administrator under the Fair Labor Standards Act state in relevant part:

> It is not necessary that an employee be permitted to leave the premises if he is

> otherwise completely freed from duties during the meal period.

29 CFR §785.19(b)

Bono Enterprises, Inc. v. Bradshaw, 32 C.A. 4th 968 (1995), raised this identical question under Order 1-89. In that case, the Labor Commissioner took the position that employees must be paid for a meal period if they are not allowed to leave the employer's premises. The court agreed with the Labor Commissioner's interpretation. However, the court pointed out that the result would have been different under Order 5-89 because of the FLSA standard that was added to Section 2(H) of that order (quoted above). The court observed that:

> IWC Order No. 5-89 proves only that the IWC, after hearing and consideration, has decided to adopt the federal guidelines with respect to workers employed in the housekeeping industry. There has been no comparable amendment of the regulations applicable to workers employed in the manufacturing industry. The fact that IWC did not amend the language of Order No. 1-89, when it clearly could have done so, indicates DLSE's interpretation is consistent with IWC intent....

32 C.A. 4th at 977.

In view of the foregoing, we submit that under Order 5-89 an employer in the health care industry is not required to pay employees for a meal period, even if they are required to remain on the employer's premises, if they are completely freed from duties during that period. We would appreciate receiving a ruling from you confirming this interpretation.

Sincerely,

William J. Emanuel

William J. Emanuel

WJE/mm

I hope this adequately addresses the questions you raised in your letter of October 31, 1995.

Yours truly,

JOSE MILLAN
Interim Labor Commissioner