STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
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H. THOMAS CADELL, JR., *Chief Counsel*

July 20, 1995

Brian S. Arbetter Esq.
Mitchell, Silberberg & Knupp
11377 West Olympic Blvd.
Los Angeles, CA 90084-1683

Re: **Paperless Time Recording System**

Dear Mr. Arbetter:

The Labor Commissioner, Victoria Bradshaw, has asked me to respond to your letter of October 25, 1994, regarding the above-referenced subject.

In your letter you ask for an opinion from the DLSE as to whether the time recording system which your client proposes to put into place would meet the requirements of California laws. As you describe the system, the dates and times of sign in and sign out would be automatically recorded on computer as a result of the employee punching in number codes through the employer's telephone system. Three times during each pay period the employer would post a printout, listing by assigned employee number, the recorded hours by date for each employee. These postings would be placed in a central location and remain posted for four days so that employees could review their time and raise any discrepancies. Upon removal of the printed postings, the employer would recycle the paper and rely solely on the records as stored in the computer database.[1]

The Division has taken the position that storage of records by electronic means meets the requirements of California law if the records are (1) retrievable in the State of California, and (2) may be printed in an indelible format upon request of either the employee or the Division. The DLSE policy closely follows the federal regulation contained at 29 C.F.R. § 516.1.

The one concern we have with the system you propose is that

[1]You state in your letter that the employer does not intend to modify the way it reports wage and hour information to employees on their pay stubs and it appears that procedure meets all the requirements of California law.

you seem to indicate that the employee would have no more than the four day period to "raise any discrepancies" regarding the time records and, thereafter, the employer would "rely solely on the records as stored in the computer database. By implication, that language would indicate that you intend to shift the burden of proof for keeping accurate time records from the employer to the employee. This, of course, would not be permitted. There could be a number of reasons why an employee would not be able to bring discrepancies to the attention of the employer within the four-day period. While the employer who, in good faith, issued a payroll based upon innocently erroneous information would not have violated any California law, a refusal to correct the error based solely upon a time factor would be illegal.

With the above caveat, the Division finds nothing in the proposal you submitted which would violate California law.

Thank you for your continued interest in California labor laws.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw