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*

December 30, 1996

William S. Waldo, Esq.
Paul, Hastings, Janofsky & Walker
555 South Flower Street
Los Angeles, CA 90071-2371

Re: **Intern Program Exemption**

Dear Mr. Waldo:

This will acknowledge receipt of your letter of December 17, 1996, wherein you ask the agency to review the intern program your client has instituted to see that the intern program complies with all applicable state law.

You state that your client, engaged in the entertainment industry, has adopted a student intern program in which college students work on different lots on its studio performing a number of tasks. The shows that the "interns" work on run for a period of 39 weeks with a 13-week hiatus before starting up again. The interns work two consecutive days a week for a total of 15 hours per week. In return for the work they perform on the studio lots, the students earn college credit. The students do not replace regular studio employees and, when entering the program, the students are aware that they will not be paid for their work at the company.

You conclude that under California law the students under these circumstances are not "employees" entitled to "minimum wage or other protections afforded to employees under the wage and hour laws." You seem to suggest that reliance on some U.S. Department of Labor opinions will lead to the conclusion that these students are not employees. While I will not attempt to give you an opinion regarding the federal rule, I believe that this reliance is misplaced. In any event, the California rule used by the DLSE is published at §1.04[1][e] of Wilcox, *California Employment Law*.

Historically, DLSE has required that the training be an essential part of an established course of an accredited school or

of an institution approved by a public agency to provide training for licensure or to qualify for a skilled vocation or profession. The program may not be for the benefit of any one employer, a regular employee may not be displaced by the trainee, and the training must be supervised by the school or a disinterested agency.

In the fact pattern you submitted, there is no mention of what licensure requirements or training for a skilled vocation or profession may be obtained through the training your client provides through this program. Indeed, it is not even clear what occupation the work may prepare the student to perform.

The statement that the student will not replace a regular studio employee means little in view of the fact that the "student" is performing routine work such as delivering messages, filing tapes, performing data entry and clipping newspaper articles. The requirement that the student not displace a regular worker means that the student is not to perform work that any other employee would be expected to perform; not simply that the work performed by the "student" does not result in a student replacing those workers currently on the payroll. It is entirely conceivable that the routine work performed by the student results in a job applicant not being able to find employment.

It may be possible, working with the academic institutions involved, to formulate a program to provide on-the-job experience in some licensed or professional occupation which will meet the requirements of California law. However, the program based on the outline submitted will not meet those requirements.

If you have any questions regarding the issue please feel free to call the undersigned.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Roberta Mendonca, State Labor Commissioner