

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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H. THOMAS CADELL, JR., *Chief Counsel*

December 3, 1997

John Hermann
Strategic HR Services
5000 Birch, Suite 8000
Newport Beach, CA 92660

Re: **Applicability Of Wage Order 5**

Dear Mr. Hermann:

This is to confirm our telephone conversation of this date wherein I advised you that golf course employees would be subject to the provisions of Wage Order 10-89, the order covering the Amusement and Recreation Industry.

In answer to your question regarding the effect the changes in the IWC Orders scheduled to take effect on January 1, 1998, will have on your clients in the Amusement and Recreation Industry, the answer is: There will be no effect. The only orders being changed are 1, 4, 5, 7 and 9. Under the amendments to these orders, there will no longer be an obligation to pay overtime after eight hours in a workday.

Specifically, you asked whether workers employed in a restaurant on a golf course would be affected by the changes in Order 5-98. The answer is no since these workers are covered under Order 10-89. You stated that one of your clients had been informed by an employee of the Division that the employees of the golf course who are employed in the restaurant located on the golf course would be covered by Order 5-98, covering the "Public Housekeeping Industry". This is incorrect.

The definition of "Public Housekeeping Industry" remains the same as it has been for at least forty years:

"'Public Housekeeping Industry' means any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes..." (Emphasis added)

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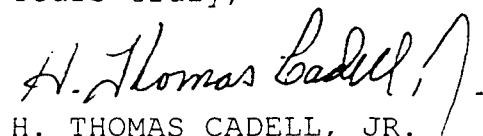
Therefore, since the employees of the golf course who are engaged in the operation of the restaurant are covered by the applicable "industry order" (IWC Order 10), they are not covered by the provisions of Order 5. As you can see, the language adopted by the Commission avoids the almost impossible situation which would have arisen had the Commission decided to cover some employees in an establishment under one wage order while covering other employees under another.

This same result would be reached in any case where there are restaurant or lodging facilities or maintenance services which are incidental to the operation of a business under another "industry" order. For instance, theaters with employees involved in food service would still be under Order 10 because theaters are covered by that order.

On the other hand, if there were employees of an oil drilling operation engaged in the operation of food service (perhaps at the well-head) those employees would be under Order 5 because there is no industry order covering oil drilling.

I hope this adequately addresses the issues you raised in our telephone conversation and the memo you faxed to me from one of your clients. I want to apologize for any inconvenience that you or your clients may have faced as a result of any misinformation from members of our staff. However, as you know, a question can be misinterpreted and that may be what led to the misinformation.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Jose Millan, State Labor Commissioner
Nance Steffen, Assistant Labor Commissioner
Greg Rupp, Assistant Labor Commissioner
Tom Grogan, Assistant Labor Commissioner