

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

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October 28, 1986

Ms. S. Zahava Aroesty
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Suite 1600
1875 Century Park East
Los Angeles, CA 90067-2501

Dear Ms. Aroesty:

This is in reply to your letters of October 15 and 22, 1986, regarding the Division's Interpretive Bulletin 86-3.

The answers to your questions under paragraph 1 are as follows:

a. Floating holidays and b. general absences would be considered vacation time under the Suastez decision.

Vacation time that has been advanced to an employee, i.e., it has not been earned in accordance with the employer's policy may be deducted at the time of termination provided that:

1. The time has not been "paid back" or earned.
2. The advanced vacation time has been considered an advance against salary and is reflected as such in the payroll records. In addition, the salary advance is noted on all subsequent wage payments to the employee, until it has been paid back. (This is a departure from former Commissioner Simpson's opinion limiting the restriction of advance vacation pay to three months.)
3. A general absence or leave policy that permits an employee to use such time as personal or sick time, but not vacation time would probably be considered vacation pay under the Suastez decision, as permitting the employee to use the time at his or her personal convenience or option appears to be in effect vacation time. This is an unusual situation as the employee apparently has a right to the time off in the same manner as vacation time; however, cannot use the time as "vacation." The basic differentiation between what is sick leave and what is vacation pay is on the restrictive nature of sick leave, which cannot be used

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Ms. S. Zahava Aroesty

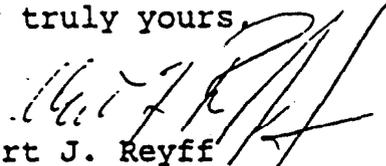
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unless there is a valid reason, i.e., the employee is ill as determined by the employer's policy whereas vacation or personal time be used by the employee with only restrictions relating to the scheduling when the time off is to be taken.

I hope this answers your questions; if not, please let me know.

Very truly yours,



Albert J. Reyff
Chief Deputy Labor Commissioner

AJR:sw

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