

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

225 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102
(415) 557-3827



ADDRESS REPLY TO:
P.O. BOX 603
San Francisco, CA 94102

IN REPLY REFER TO:

May 11, 1987

Mr. Arthur F. Silbergeld, Esq.
McKenna, Conner & Cuneo
Twenty-Eighth Floor
3435 Wilshire Blvd.
Los Angeles, CA 90010

Dear Mr. Silbergeld:

This is in reply to your letter of April 24, 1987, regarding your client's executive vacation and sick leave policy.

Frankly, I do not agree that no vacation is accruing under your plan. Managers are told they have a basic entitlement to four weeks and more on approval. To approve your policy, as written, would make Suastez a dead letter since every employer would tell employees they have unlimited vacation (though none is accruing or vesting), but can only take more than one or two or three weeks with approval.

Accordingly, based on our review of the program presented, eligible executive employees who terminate would be entitled to a pro rata share of at least four weeks' vacation pay. The Suastez decision states that vacation, when offered in an employer's policy or contract of employment, constitutes wages for services rendered and that a proportionate right to vacation pay "vests" as the labor is rendered. Moreover, if an executive or senior manager customarily receives more than four weeks vacation "with approval," such employee would also be entitled to a pro rata share of the "approved vacation." This would have to be decided on a case-by-case basis.

I hope this is responsive to your questions; if not, please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lloyd W. Aubry, Jr.", written over a large, stylized flourish.

Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA:sw

1987.05.11