STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Gov

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

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IN REPLY REFER TO:

July 1, 1987

Richard M. Albert, Esq.
Attorney at Law
Weissburg and Aronson, Inc.
32nd Floor, Two Century Plaza
2049 Century Park East
Los Angeles, CA 90067-3271

Dear Mr. Albert:

This is in reply to your letter of May 20, 1987, regarding a bonus plan for nurses.

Paying a yearly bonus on a quarterly basis would not be violative of any of the State's wage payment laws; however, requiring the quarterly bonus to be repaid if the employee does not remain for one year presents several problems.

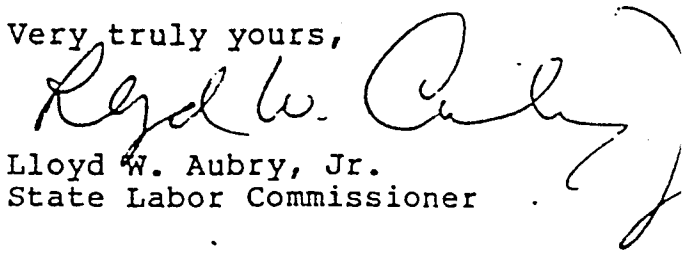
First, in most bonus plans, if there is a termination prior to completion of the specified period needed to earn the bonus, there is always a question of substantial performance. Indeed, I question whether this is really a yearly bonus or is, in fact, a quarterly bonus (i.e., earned each quarter), but is called a yearly bonus so the employer can ask for repayment if a full year is not worked.

The second problem with your concept is the application of two court decisions, Kerr's Catering and Barnhill, which can be interpreted to prevent an employer from deducting the amount of the bonus from any wages due. Certainly, as a matter of contract, an employer may request the bonus be returned, though a court may, as noted above, interpret these payments to really be quarterly bonuses such that no repayment would be required. In any case, the employer would clearly have to proceed through the civil courts to attempt to collect the already-paid quarterly bonuses from an employee who terminates before completing a full

year. In effect, you are asking us to consider these quarterly payments to be an advance on the yearly bonus. I am not convinced that a court would accept this proposition.

I hope this is responsive to your question. If not, please let me know.

Very truly yours,



Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA:ba