STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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GEORGE DEUKMEJIAN, Governor

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July 13, 1987

David L. Slate, Esq.
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Re: Applicability of Suastez to Sabbatical Leave Program

Dear Mr. Slate:

This letter is intended to respond to your letter of June 12, 1987, requesting an opinion concerning the applicability of Labor Code S 227.3 and the Suastez decision to a sabbatical leave program. In my opinion if the sabbatical meets the criteria set forth below it is not subject to S 227.3 and Suastez.

A sabbatical has been defined as a leave of absence with pay for "travel, research, or rest". Of course, this same definition could also be applied to a vacation. But a sabbatical usually occurs only after a long period of employment (7 years in the academic world, though sabbaticals are not restricted to the academic world) and must meet other criteria before it will be acceptable to the Labor Commissioner.

Accordingly, in order for a sabbatical not to be subject to S 227.3 and Suastez, the following criteria must be met. The sabbatical must be for an extended period of time beyond what is normally granted for vacation. It cannot replace or displace the vacation normally earned each year but must be in addition to a regular vacation program. Sabbatical leave may only be provided to high level managers and professionals in advanced fields. Finally, sabbatical leave should be granted infrequently, such as every 7 years, though in certain circumstances a shorter period may be acceptable.

If the sabbatical meets the narrow criteria set out above the Division of Labor Standards Enforcement takes the position that the leave is neither related to vacation nor is it subject to the provisions of Labor Code S 227.3 or the Suastez decision. Each case will be handled by the Division on a case-by-case basis reserving to the Labor Commissioner the right to disallow any program which uses the term "sabbatical" but is really a subterfuge to avoid the proration of vacation benefits.

Based upon the information you submitted in your letter of June 12, 1987, your client's program would not be subject to Suastez and § 227.3.

I hope this adquately addresses the concerns set out in your letter of June 12th. If you have any further questions please feel free to call on me.

Yours truly,

Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA/pat

bcc: Albert Reyff
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