GEORGE DEUKMEJIAN, Governor

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IN REPLY REFER TO:

October 6, 1987

Mr. James E. Boddy, Jr.
Morrison & Foerster
California Center
345 California Street
San Francisco, CA 94104-2105

Dear Mr. Boddy:

This is in reply to your letter of August 21, 1987 regarding the applicability of Suastez to a sabbatical leave program which is available to all employees of a firm.

After further consideration, the division's position, as set forth in my letter of July 13th, still stands. Except as set forth below, a sabbatical leave program available across the board to all employees is subject to Suastez. In my view, the chances for avoiding Suastez are too great, and the difficulty of consistent enforcement too obvious, to warrant a case-by-case analysis.

However, an exception can be made for firms which had a policy that antedated Suastez and which historically offered sabbatical leaves to employees other than high level managerial professionals. Such plans must have been in addition to regular vacation time off. In these situations, the application of Section 227.3 and the principles of Suastez would result in the limiting or modification of existing plans which clearly were not developed and designed to avoid Suastez. Obviously, this would effect a disservice to the employees covered by the plan.

Labor Code Section 227.3 mandates the Labor Commissioner to "apply the principles of equity and fairness" in handling vacation matters. Since the sabbatical leave plan set forth in your letter is applicable to all employees but is a pre-existing plan, it is not subject to Suastez. Of course, if the plan is changed and is operated in the future in such a way that a subterfuge to avoid Suastez has been created, the principles of Suastez would then be applicable.

I hope this clarifies these issues.

Very truly yours,

Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA/jv

DLSE 905

1987.10.06