STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

RTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
525 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

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

IN REPLY REFER TO:

Legal Section

August 4, 1988

Dawn T. Kitagawa
Ballard, Rosenberg & Golper
10 Universal City Plaza
16th Floor
Los Angeles, CA 91608

Re: Vacation Pay

Dear Ms. Kitagawa:

This is in response to your letter of July 21, 1988, requesting clarification of the Interpretative Bulletin issued September 30, 1986, dealing with vacation pay.

The facts set out in your letter indicate that your client would like to implement a vacation plan which provides that no vacation would be accrued for the first 90 days of employment but the employee would be entitled to one week of vacation at the completion of one year of employment and one week of vacation at the end of the second, third, and fourth years of employment. At the end of five years of employment your client would provide two weeks of vacation.

As the policy which you attached to your letter makes clear, the accrual of vacation for the first year would be one week of vacation for nine months of employment (or approximately .555 days per month). The accrual rate for the second year of employment would be one week of vacation for 12 months (or approximately .417 days per month)

Obviously, the employee is accruing vacation at a higher rate in the first year of employment than in the second year of employment. Hardly a reasonable acceleration policy. Your attention is directed to the footnote on page 4 of the September 30, 1986, Interpretive Bulletin and, in particular, the last sentence of that footnote which provides:

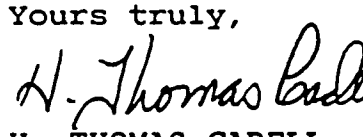
> "As long as the rate of acceleration is reasonable and not an obvious attempt to avoid the principles of Suastez by allocating vacation obviously earned in one period to another, such policies will be recognized by the Labor Commissioner."

1988.08.04

Inasmuch as the acceleration rate for the first year actually decreases in the second year it appears quite obvious that the vacation earned in the last nine months of the first year is actually being earned during the period of time your client contends no vacation is accruing.

Again, your firm indicates that it has received "conflicting opinions from the local DLSE offices". We have asked before that your firm please advise the Labor Commissioner of the offices and employees you have approached so that we may undertake education and training in an effort to clarify any misunderstandings among our field staff.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr.