STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
Legal Section
Van Ness Avenue, Suite 4400
San Francisco, CA 94102

1990.07.06

July 6, 1990

R. Brian Dixon, Esq.
Littler, Mendelson, Fastiff & Tichy
650 California St., 20th Floor
San Francisco, CA 94108-2693

Re: Alternative Work Schedules

Dear Mr. Dixon:

This is intended to respond to your letter of July 2, 1990, regarding the above-referenced and other matters.

Initially, I think I should respond to your concerns about the "part-time" employee and the right of those workers to engage in alternative schedules. Your letter appears to conclude that "part-time"[1] workers under orders 4[2], 5, 9 or 10 could not engage in alternative workweeks. Neither the Division's interpretive bulletins nor my letter of April 27th were intended to exclude the "part-time" worker from being involved in the alternative workweek. The "part-time" employee would obviously be a "recognized subdivision" of the work group. However, the "part-time" employees' workweek must be "regularly scheduled" within the "part-time" hours. In other words, if an employer has employees who are "regularly scheduled" to work, for instance, thirty hours per week (a regular schedule of five six-hour days) and another group of employees who are regularly scheduled to work five four-hour days, the latter group are in a recognized "subdivision" of the work group and either of those groups could opt for an alternate workweek schedule which complied with the Orders.

1/ It should be noted at this point that there is no definition of the term "part-time" in the wage orders or in the Labor Code. Commissioner Aubry adopted the definition "less than 40 hours in a workweek" as a definition for purposes of the Interpretive Bulletin

2/ Order 1-89, of course, does preclude the use of the four ten-hour day alternative workweek when there is not a full forty hours of scheduled work.

The one group of employees described above who are currently working thirty hours per week might opt to work three regularly scheduled ten hour shifts and the second group might opt to work three regularly scheduled shifts consisting of two nine- and one eight-hour day.

I hope this clarifies any misunderstanding there may have been with the interpretive bulletin or my letter of April 27th.

Regarding the dates which you suggest for meeting with you and your partners to discuss the many questions which you have presented in your letter, the date of July 19th (from 1 p.m. to 2:30 p.m.) is available on my schedule at the present time. With the increased case load and uncertainties brought on by summer vacations, I must advise you that any date chosen must remain tentative at this time. In the event of a required court appearance to cover for an attorney on vacation, I will be forced to reschedule the meeting. However, I will make every effort to meet at the appointed time with you and your colleagues. I intend to invite at least two other staff who are familiar with the points you raise in your letter to attend the meeting.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. James Curry
Simon Reyes
Roger Miller
Jose Millan