

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
Legal Section  
20 Van Ness Avenue, Suite 4400  
San Francisco, CA 94102



February 13, 1991

Jay V. Jory, Esq.  
Jory, Peterson & Sagaser  
555 West Shaw Ave., Ste. C-1  
Fresno, CA 93755-5394

Re: Opinion as to applicability of §9(A) of IWC Order 5-89

Dear Mr. Jory:

James Curry, Acting Labor Commissioner, has asked me to respond to your letter of January 16, 1991, regarding the above subject.

You ask whether an employer in a hospital, who requires the standard white uniform to be worn but permits a specific pastel uniform at the employee's option, must pay for the pastel uniform if the employee chooses that option? The facts you submit do not allow me to give you a definitive answer.

The Division has historically taken the position, based upon notes of the Commission, that nurses can wear their white uniforms wherever they work, and the employer, consequently, need not pay for them. Other workers in occupations for which the particular white uniform is generally useable would fall into the same category. However, your letter also covers "health care assistants" which is a broad term for which you offer no definition. If these individuals, instead of being professional nurses, were housekeepers or clerical employees, the rationale contained in the Statement of Basis which you quote would not be applicable since a uniform would not be "generally usable in the occupation." Consequently, any uniform (regardless of color) which is required to be worn by an individual in an occupation which would not generally wear that particular uniform, must be paid for by the employer.

If the pastel uniform were freely chosen by a nurse or other health care professional in an occupation which generally wears a white uniform, it is the opinion of the Division that it need not be paid for by the employer because the employer would not have been required to pay for the standard white uniform. The employee could not take advantage of the option and thereby create an obligation for the employer. Such would not be the case, of course, if the choice of wearing a standard white uniform were not available.

Jay V. Jory, Esq.  
February 13, 1991  
Page 2

The second question you pose deals with the requirements of care of the garment. The factual situation you present involves an employer who specifies a "certain quality of material for its uniforms which requires minimal care, e.g., washing and tumble or drip drying." You ask what responsibilities the employer would have if the employee "deviates from the specified fabric and buys another uniform made of a quality of fabric which requires special care such as ironing or drycleaning?"

Again, the employer would only be responsible for payment for the uniform which the employer specifies and would not be responsible for the care and maintenance which the fabric of the uniform purchased by the employee might require. The employee may not thrust obligations on the employer.

In the third question you ask us to assume that the material required by the employer requires special maintenance and ask if it is permissible to require the employee to drop off and pick-up the uniform directly from the employer who will then provide the cleaning service?

So long as the employer provides a changing room or other facility on the premises so that the employee may change clothes there would be no problem with requiring the employee to leave the uniform with the employer for cleaning. Since it is the responsibility of the employer to maintain the uniform, it is the prerogative of the employer to choose who will do that service. However, the employer could not require the employee to return to the place of employment for the purpose of dropping off the uniform without incurring the cost of the time required to do so and cost of transportation.

You also ask if it would be permissible to require that the employee take the garment to a facility of the employer's choosing which is off the employer's premises for cleaning? The answer is that such time would be compensable and the travel costs recoverable pursuant to Labor Code §2802.

I hope this adequately addresses the questions you raised in your letter of January 16th. If you have any further questions I suggest you contact your nearest District Office of the Division.

1991.02.13

Jay V. Jory, Esq.  
February 13, 1991  
Page 3

Yours truly,

*H. Thomas Cadell, Jr.*  
H. THOMAS CADELL, JR.  
Chief Counsel

c.c. James H. Curry

1991.02.13