STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement
Legal Section
455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102

1991.03.03

March 3, 1992

Lynn K. Thompson, Esq.
Bryan, Cave, McPheeters & McRoberts
333 S. Grand Ave., Suite 3100
Los Angeles, CA 90071-3171

Re: **Treatment of "Bonus Days" as Vacation**

Dear Ms. Thompson:

Your letter of February 26, 1992, addressed to Commissioner Bradshaw, has been referred to this office for reply.

In your letter you state that your client has a policy of awarding "bonus days" for perfect attendance. The policy provides for four hours of "bonus" time for every six weeks of perfect attendance. You state that these accrued "bonus" days may be used in increments of not more than eight hours[1] for any purpose the employee wishes. However, the employer's policy does put certain restrictions on the use of the bonus days.

You state that bonus days may be accumulated up to a maximum of five days; but, you state, the policy of the employer does not treat the unused bonus days as vested.

You further state that it is your understanding that a former employee of your client had occasion recently to file a claim with one of our District offices for recovery wages for unused "bonus days". It is your understanding that the matter never went to hearing because "the deputy informed the employee at the settlement conference that his claim lacked merit because bonus days would not be treated as wages or vacation under the Labor Code."

As you may know, that is not a correct application of DLSE enforcement policy. While the employer's policy regarding accumulation and use of the "bonus" time while employed is a matter which will not be reviewed by the Division, the vesting of the "bonus" time is covered under the *Suastez* doctrine.

Labor Commissioner Lloyd Aubry covered this topic in Interpretive Bulletin 86-3 (September 30, 1986) at page 4, ¶ 8:

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[1] We assume that the time may be used in increments of less than eight hours as well.

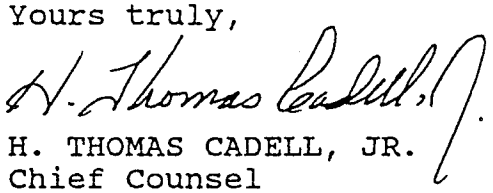
> Some employers do not have separate arrangements for vacation and sick leave. Rather, employees are granted a certain number of "paid days off" which can be used for any purpose, including vacation and sick leave. Since employees have an absolute right to take these days off (unlike traditional sick leave where using such leave is contingent on sickness), "paid days off" are, in effect, vacations and will be treated according to the principles of *Suastez*.

The DLSE enforcement position in this regard has been and continues to be guided by the above language. In the event that the time off is not contingent upon a particular event (a holiday, sickness, bereavement, etc.) the time is treated as vacation subject to the doctrine in *Suastez*.

I am sorry for any inconvenience you or your client may have suffered as a result of the incorrect information received from the District Office. In order to assure that this mistake does not recur, I am sending a copy of this letter to all of our District Offices for distribution to all professional personnel.

If you have any questions, please feel free to contact the undersigned.

Yours truly,



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