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
5) 703-4150

H. THOMAS CADELL, JR., *Chief Counsel*

September 7, 1993

Lila J. Saks, President
Diversified Personnel Services, Inc.
1746 Broadway, Suite 300
P.O. Box 29175
Oakland, CA 94604-9175

Re: **Trainees**

Dear Ms. Saks:

Your letter of August 18, 1993, addressed to Labor Commissioner Victoria Bradshaw has been assigned to this office for review and response.

The attachment to your letter lists each of the twelve criteria utilized by the Division to establish a true trainee situation as opposed to that of an employee/trainee.

According to your letter, your firm intends to establish a program training applicants who are currently receiving unemployment benefits, have recently exhausted their unemployment benefits, or are eligible for unemployment insurance. The training to be given covers word processing, operating systems, spreadsheets, and other computer software applications.

The training, according to your letter, does not cover any of your firm's policies or procedures and further training and orientation specific to your firm's needs would be required of all trainees after the conclusion of the proposed training in the event the trainee were to be offered employment with Diversified.

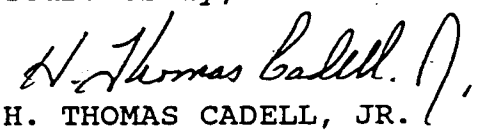
We are concerned, however, with the answer to criteria number 11 in the attachment to your letter. The requirement is that the "screening process for the program should not be the same as for employment and should not appear to be for that purpose; it should involve only criteria relevant for admission to an independent education program." In response to this requirement you state that "[t]he screening process for the training program focuses only on the trainees' previous experience with computer software and other criteria relevant to training." In addition, you point out that only unemployed individuals are eligible to participate.

The requirement contained in criteria number 11 is designed to insure that an employer who is also operating a training program is not using the "training" as a condition of employment. It would not be appropriate to require any applicant for employment (whether that applicant qualifies for unemployment insurance or not) to take the training as a condition of employment with Diversified. This must be made clear to any applicant.

Regarding this, it is unclear what is meant by your statement "[t]he screening process for the training program focuses only on the trainees' previous experience with computer software and other criteria relevant to training." As your statement seems to recognize, the screening for the training process must be separate from the screening for employment with your firm. Obviously, if the individual has prior computer experience he or she might not be interested in the training. But we don't understand how that fact could be used as a criterion for the training. It is possible that there may be a basic educational requirement in order to qualify for computer training; or, even an aptitude test which one must successfully complete. Such factors may be considered in screening the applicants for the training process[1]. However, using prior experience as a single criterion is inconsistent with "training" and is more closely related to considerations one might use in a hiring process.

The Division does not have access to any facts except those which you submit. This letter, therefore, is based upon those facts, is designed to raise particular concerns evidenced by the facts you present, and is not meant to endorse or sanction your proposed "training" program.

Yours truly,



H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw, State Labor Commissioner
Peter G. DeMauro, Genl. Counsel,
Employment Training Panel

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[1] We see no problem with limiting the training to individuals who are eligible for unemployment insurance benefits.