STATE OF CALIFORNIA
PETE WILSON, Governor
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
455 Golden Gate Avenue, Room 3166
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(415) 703-4150
H. THOMAS CADELL, JR., *Chief Counsel*

1993.11.29

November 29, 1993

Deborah Fries
Employment Development Department
Vallejo EDD
1440 Marin Street
Vallejo, CA 94590

Re: **Compensation For Training**

Dear Ms. Fries:

The Labor Commissioner has asked me to respond to your letter of November 22, 1993, regarding questions which have arisen in connection with required training. You point out that our District offices have all explained that such practices are not allowed but suggested that in view of the company's contention that they had received "a verbal OK" that you contact the Commissioner.

It is our understanding from your letter that as part of the "hiring procedures" of a firm seeking to take advantage of on-the-job training benefits available under the Service Members Occupational Conversion and Training Act of 1992, veterans who are candidates for employment with this firm are required to undergo "8-10 hours of Bay Area Training Trust (B.A.T.T.) training and 8 hours of Site Specific Training. All of this "training" is unpaid.

The Division holds that all pre-employment training time is compensable[1]. There may arise situations where an employer may wish to have a prospective employee exhibit skills such as typing, shorthand or operation of machinery, before employment. The Division will accept such "try out time" as non-compensable if: (1) this time is not, in fact, training as opposed to testing skills; (2) there is no productivity derived from the work performed by the prospective employee; and (3) the period of time is reasonable under the circumstances.

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[1] Under very limited circumstances, high school students may engage in short term training on the premises of an employer under programs such as ROP. These programs are in conjunction with the school curriculum and are monitored by the high school teacher. In these programs the on-hands experience is limited and available to all of those who are enrolled in the program. The training is <u>not</u> a condition of employment.

The requirements which you describe fail at least two of the three parts of the test. This clearly is "training" and not "try-out" and, just as clearly, even if this were "try-out" the period of time is not reasonable under any circumstances. There is insufficient information available to determine whether there is any "productivity derived from the work performed by the prospective employer."

We note that you have deleted the name of the company which is using this device. We would appreciate that information so that we can take steps to alleviate this type of practice. We think that the practice is especially offensive in view of the fact that it is our returning veterans who are being victimized. I also suggest that you contact the United States Department of Labor and the Veteran's Administration regarding this practice.

Thank you for your interest in California labor law. If we can be of any more help please feel free to contact our nearest office.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw
Lola Felix, Regional Mgr.