

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

45 Fremont Street, Suite 3220
San Francisco, CA 94105
(415) 975-2060

.. THOMAS CADELL, JR., Chief Counsel

May 30, 1996

Mark Vegh
Employee Relations Counsel
Timber Operators Council
P.O. Box 493007
Redding, CA 96049-3007

Re: Payment of Wages At Temporary Layoff

Dear Mr. Vegh:

This is intended to reply to your letter of March 13, 1996, wherein you ask the Division's opinion regarding the obligation of an employer to pay wages due at the time of a "temporary layoff."

In your letter you state that it has been your organization's understanding that immediate payment of wages is not required if a definite date of return from layoff is provided to employees at the time of their layoff. That statement is correct as far as it goes. However, the Division's position is that if an employee is laid off without a specific return date within the normal pay period, the wages earned to and including the lay off date are due and payable in accordance with Section 201. If there is a return to work date within the pay period, and the employee returns to work, all of the wages may be paid at the next regular pay day. (See 2 DLSE Operations and Procedures Manual § 10.03, p. 1) The question has been addressed in a similar context by the California courts as well. In regard to the question of termination for purposes of unemployment insurance, the First District Court of Appeal stated in *Campos v. EDD* (1982) 132 Cal.App.3d 961, 974:

"We consider that, where the employees have no contractual right to recall within any specified time period, the better approach is to treat such layoffs as indefinite, thereby terminating any employment relationship..."

The needs of employees in the situation of a "layoff" are what prompted the Division to historically take the position that the date of return must be within the pay period. For example, the employee may be required by the circumstances to travel to another location seeking work. Since many workers live from paycheck to paycheck, this travel and its attendant costs would require that the worker be paid all wages owed at that time.

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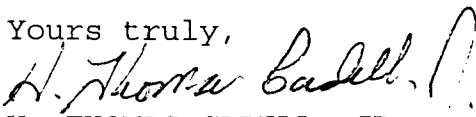
In addition, experience has taught that some unscrupulous employers would take advantage of an enforcement policy which extended the time for recall past the pay period to escape the obligations of payment at termination and, thus, the penalty imposed for a failure to pay the wages due at termination imposed by Labor Code § 203.

In your letter you ask the Division to address two situations which you set out. In one, the employees are subject to a collective bargaining agreement which provides for recall rights with full seniority. In the second situation are non-union employees where "[R]ecall rights and continued employee status are conditions of employment embodied in an employee handbook." In both situations you conclude that there has been no termination as long as there is some "definite return date."

You argue that in neither situation is there, in fact, a termination because the employee has "contractual recall rights." The Division is hesitant to address this situation without knowing what the "contractual recall rights" consist of; but it is difficult to imagine a contractual right to recall on a specific date in the future which was unconditional. A right to recall which required the employer (regardless of economic conditions) to recall all (or even some) of the employees would be unique to say the least. Experience teaches that no employer could afford to contract away its right to hire or not hire depending upon need; and absent an unconditional right to return to full time employment on a date certain regardless of economic conditions, the "right to recall" would be nothing more than a conditional promise by the employer unenforceable by the employee. In addition, of course, absent a specific agreement to the contrary, the employee would have the right to seek employment elsewhere and not return to the employer so there would exist no mutual promises to support a contract for continued employment.

I hope this adequately addresses the question you raised in your March 13th letter.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Roberta Mendonca, State Labor Commissioner

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