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Robert A. Jones
*Acting State Labor Commissioner
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Division of Labor Standards Enforcement*

July 6, 2006

Colette Wolf
Boise Cascade LLC
Legal Department
11111 West Jefferson Street
P.O. Box 50
Boise, Id. 83728

Re: Electronic Itemized Wage Statements

Dear Ms. Wolf:

Thank you for your inquiry concerning the application of Labor Code section 226(a). Specifically, you have requested an opinion as to whether under certain circumstances an employer's obligation to provide an employee with a "wage statement" may be met by providing an employee with such a record in electronic form, as an alternative to a "hard copy" paper document.

The requirement for an employer to provide employees with wage statements is contained in Labor Code section 226(a). Section 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or an applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if

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the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates¹ in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

The purpose of the wage statement requirement is to provide transparency as to the calculation of wages. A complying wage statement accurately reports most of the information necessary for an employee to verify if he or she is being properly paid in accordance with the law and that deductions from wages are proper.¹ Section 226(a) makes it possible for an employee to retain a copy of his/her own pay records which are not subject to alteration.

Labor Code section 226(a) indicates that a wage statement may be in the form of an “accurate itemized statement in writing” when the employee is paid by personal check or cash. Labor Code section 8 states in pertinent part: “Writing includes any form of recorded message capable of comprehension by ordinary visual means.” As an electronically stored wage statement which is accessible by an employee may be read on a screen or printed and read as a hard copy, it appears to qualify as a “statement in writing.”

Section 226(a) provides that an employee being paid with a payroll check be provided a wage statement as a “detachable part of the check.” While the reference to “detachable part of the check” is susceptible to an interpretation that a “hard copy” may be required, in the context of the entire subsection it appears to allow for the continued use of the convenient and traditional “pay stub” alternative to a separate statement in writing.

The apparent intent of both forms of wage statements described in Section 226(a) is to allow employees to maintain their own records of wages earned, deductions, and pay received. The Division in recent years has sought to harmonize the “detachable part of the check” provision and the “accurate itemized statement in writing” provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at

¹ Whether an employee is properly classified as exempt from the overtime pay requirements of Labor Code section 510 and the IWC Orders is not susceptible to verification from review of the wage statement alone. However, a wage statement may reveal that an employee is non-exempt if it shows that an employee is paid a salary of less than twice the minimum wage calculated on the basis of a 40 hour week. See Labor Code section 515(a).

no expense to the employee. Additionally, the Division has indicated that the record keeping requirements of Labor Code section 226 and 1174 must be adhered to and the pay records must be retained by the employer for a period of at least three years and be accessible by employees and former employees. Any electronic wage statement system must incorporate proper safeguards that ensure the confidentiality of the employee's confidential information.

The system envisioned by your client appears to meet the concerns outlined above. Your client indicates that its electronic wage statement procedures will incorporate the following features:

1. An employee may elect to receive paper wage statements at any time;
2. The wage statements will contain all information required under Labor Code section 226(a) and will be available on a secure website no later than pay day;
3. Access to the website will be controlled by unique employee identification numbers and confidential personal identification numbers (PINs). The website will be protected by a firewall and is expected to be available at all times with the exception of downtime caused by system errors or maintenance requirements;
4. Employees will be able to access their records through their own personal computers or by company provided computers. Computer terminals will be available to all employees for accessing these records at work.
5. Employees will be able to print copies of their electronic wage statements at work on printers that are in close proximity to the computer or computer terminal. There will be no charge to the employee for accessing their records or printing them out. Employees may also access their records over the internet and save it electronically and/or print it on their own printer.
6. Wage statements will be maintained electronically for at least three years and will continue to be available to active employees for that entire time. Former employees will be provided paper copies at no charge upon request.

There is no requirement for employers to obtain approval from the Division before implementing an electronic wage statement system. Indeed the Legislature has not established such a duty on the part of the DLSE or provided DLSE with such administrative authority. As with most provisions of the Labor Code employers are required to comply without any formal action by the Labor Commissioner.² Due to both changes in the law and confusion that has resulted from previous Opinion Letters 1999.07.19 and 2002.12.04, this letter supersedes them and they are withdrawn.

² Some provisions of the Labor Code and Wage Orders require prior Labor Commissioner action in the form of issuance of a registration, granting of approval, or provision of consent. For example, there are registration requirements in the garment, car wash, and farm labor industries which require employers to obtain a registration from the Labor Commissioner prior to employing workers. Similarly, employers must obtain the "consent" of the Labor Commissioner before a minor may be employed in the entertainment industry. Employers also may apply to the Labor Commissioner for exemptions to certain sections of the Orders of the Industrial Welfare Commission. [These examples are not intended as an exhaustive list of such provisions.]

This opinion letter sets forth an interpretation of Labor Code section 226(a) which is utilized in our administrative enforcement efforts of the wage statement requirement. This interpretation is based on our understanding as to the current state of the law and, of course, is subject to subsequent interpretations by the courts and/or action of the Legislature. Employers are advised that while the courts may find this opinion of the enforcement agency to be persuasive authority, they are not required to follow this interpretation and that compliance with the guidelines suggested herein do not establish a “safe harbor” in actions brought by private parties under auspices of the Labor Code Private Attorneys General Act of 2004 (PAGA) or other private enforcement actions.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the questions presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Division of Labor Standards Enforcement.

Thank you for your attention to the requirements of the California wage and hour laws and your inquiry.

Very Truly Yours,

/s/

Robert A. Jones
Chief Counsel and Acting
Labor Commissioner

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October 31, 2005

Mr. Robert Jones
Chief Counsel
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San Francisco, CA 94142

Subject: ELECTRONIC DELIVERY OF WAGE STATEMENTS

Dear Mr. Jones:

This letter is a request on behalf of Boise Cascade, L.L.C. to institute a program of electronic delivery of wage statements in California.

California Labor Code §226 provides in part:

“(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded

in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

“(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.”

Although the statute does not address electronic delivery, it is Boise Cascade, L.L.C.'s understanding, based on Department of Labor Standards Enforcement (DLSE) Opinion Letters 1999.07.19 and 2002.12.04, that electronic delivery of the wage statement required under Labor Code §226 is permissible under certain conditions, and further, that any employer proposing to use electronic means to deliver such statement must submit its proposed program to the DLSE for specific approval before implementing its program in California.

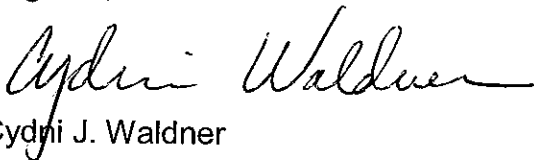
Boise Cascade, L.L.C. has developed a program for electronic delivery of wage statements and requests DLSE approval for implementing this program in California. The specifics of Boise Cascade, L.L.C.'s program are explained below.

1. Employees who voluntarily enroll in direct deposit will be enrolled for electronic delivery of wage statements unless they request to receive paper statements. Once an employee begins receiving wage statements electronically, he or she may request to receive paper wage statements at any time. Initially, the electronic delivery program will be limited to salaried employees. In the near future, the company anticipates making the program available to hourly employees as well.
2. Wage statements will contain all information required under Labor Code §226(a) and will be available on a secure website up to 48 hours prior to the actual payday, but in all cases no later than payday.
3. Access to the website is controlled by unique employee identification numbers and confidential personal identification numbers (PINs). The website is managed by Boise Cascade, L.L.C. and is protected by a firewall. The website is expected to be available at all times except for downtime caused by system errors or maintenance requirements.

4. Employees who have a company-provided personal computer with internet access will be able to use that computer to connect to the website. Computer terminals able to connect to the website are also available at the location. Employees who have home computers with internet access may also access the website from home using the web address provided by the company, their employee identification number and their PIN.
5. Employees who access the wage statement from a company-provided personal computer or computer terminal may print the statement to a network printer located in reasonably close proximity to the computer or terminal. There is no charge to the employee to print the wage statement. Employees who access the wage statement from a home computer may print the statement on their home printer or download the statement to their home computer and save it electronically.
6. Wage statements provided electronically will be maintained for the legally required period of time and will continue to be available on the website for at least three years, provided that only active employees will have access to the website. Terminated employees may request paper copies of wage statements which will be provided at no charge.

Please advise whether Boise Cascade, L.L.C.'s proposed program for electronic delivery of wage statements is approved for implementation in California. If you have any questions or need any additional information in order to respond to this request, please do not hesitate to contact me. We appreciate your attention to this request.

Regards,



Cydni J. Waldner

CJW/cw