STATE OF CALIFORNIA
GEORGE DEUKMEJIAN, Governor
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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IN REPLY REFER TO:

December 30, 1986

Mr. Louis F. Gutierrez, Esq.
Jackson, Lewis, Schnitzler & Krupman
1925 Century Park East, 11th Floor
Los Angeles, CA 90067

Dear Mr. Gutierrez:

This is in reply to your letter of October 27, 1986, regarding the application of the Suastez decision to a vacation policy where the accrual rate accelerates during the second six months of employment, then decelerates and levels off for the full year during the remainder of the employment (although the rate does rise in proportion to years of service).

Under normal circumstances, our view is that the rate of accrual may not decelerate during the period of employment as this normally is a ruse to avoid the Suastez principles. However, in your letter you advised that the above set forth policy was in effect prior to the Suastez decision. Under these unique circumstances we would consider that particular policy for that employer acceptable under the Suastez decision since there could be no subterfuge to avoid Suastez. However, we would refuse to approve such a policy if it were new and became operative after the Suastez decision as it would appear to be a subterfuge to escape from the requirements of Labor Code Section 227.3 as interpreted by the Suastez decision. While this position may appear inconsistent to you, I believe it is reasonable from an enforcement standpoint; I do not propose to require my deputies to make individual, case-by-case analyses to determine whether a particular policy with these types of features is or is not a subterfuge to avoid Suastez.

I hope this answers your questions. If not, please let me know.

Very truly yours,

Lloyd W. Aubry, Jr.
State Labor Commissioner

LWA/cs

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