STATE OF CALIFORNIA PETE WILSON, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
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H. THOMAS CADELL, JR., *Chief Counsel*

March 8, 1994

William J. Adler
Styskal, Weise & Melchione
550 North Brand Blvd., Suite 550
Glendale, CA 91203

Re: **Voluntary Acceptance Of Earned Vacation Wage At Reduced Amount**

Dear Mr. Adler:

The current Labor Commissioner, Victoria Bradshaw, has asked me to respond to your letter of January 19, 1994, addressed to former Labor Commissioner Lloyd Aubry.

In your letter you ask whether the provisions of state law would permit a policy whereby an employer, who has complied with all of the provisions of Labor Code § 227.3 and the mandates of the *Suastez* line of cases, may afford employees the right to "voluntarily 'cash in' vacation accrued under a policy which contains a "ceiling" at a discount to his or her current wage rate?"

Labor Code § 227.3 addresses only the effect of an employer's vacation policy at the time of termination. The statute requires that the employee be paid for all vested vacation as wages at his final rate of pay. The provisions of § 227.3 would not, therefore, appear to be in issue <u>if</u> the employee may "cash in" unused vacation time for, obviously, the amount of vacation time "vested" which was "cashed in" would no longer be "vested."

The provisions of Labor Code § 206.5 forbid an employer from "requiring the execution of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made. Any release required or executed in violation of the provisions of his section shall be null and void as between the employer and the employee and the violation of the provisions of this section shall be a misdemeanor." This section has been interpreted by the California Supreme Court in the case of *Reid v. Overland Machine Products* (1961) 55 Cal.2d 203; 10 Cal.Rptr. 819, to preclude an accord and satisfaction. (See also, *Sullivan v. Del Conte Masonry Co.* (1965) 238 Cal.App.2d 630, 633-634; 48 Cal.Rptr. 160) As the court noted in *Sullivan v. Del Conte Masonry Co., supra*, the employer and employee may compromise a bona fide dispute over wages, but the compromise is only binding if made after wages concedely due have been unconditionally paid.

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It may be argued that it is vacation "time" and not vacation "wages" which are due during the period of the employment. However, that premise does not consider the fact, as your letter acknowledges, that the "time" is to be "cashed in" at a discount to his or her current wage rate. Thus, it would be fruitless to argue that it is not earned wages which are the basis of the attempted "accord and satisfaction."

You point out in your letter that the "early payout...also provid[es] the employee the opportunity to accrue additional vacation hours that the employee might not otherwise have been eligible for under the vacation accrued 'ceiling'." I believe what you mean to imply is that the employee would be able to receive some compensation under the "cash in" method (albeit, at a discount rate) while allowing the employee to continue to accrue vacation which would have been precluded under the "ceiling". While we admit that this could be a benefit derived by the employee, we are concerned that the "cash in" will be construed as an attempted accord and satisfaction of earned wages and will be void.

Labor Code § 227.3 provides that the Labor Commissioner is to enforce the provisions of the employer policy as to "eligibility or time served." We do not see this as a question either of eligibility or time served; your proposal raises questions of other minimum labor standards which may be impacted. The Division can only caution you that the plan may not be valid.

I am sorry that we can not be of more assistance to you. We appreciate your interest in California labor law.

Yours truly,

H. Thomas Cadell, Jr.

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw, State Labor Commissioner