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MEMO TO: ALL STAFF

FROM: LORA FOO

DATE: OCTOBER 15, 1985

RE: EMPLOYEE'S RIGHT TO POST TERMINATION VACATION PAY

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California Labor Code Section 227.3 provides that when an employer provides for paid vacations and an employee is terminated without having taken his/her vested vacation time, the employee is entitled to all "vested vacation", paid to him/her as wages at his/her final rate of pay. In Suastez v. Plastic Dress-Up Co., the California Supreme Court issued an opinion on when the right to vacation vests.

In Suastez, the employer's vacation policy provided that employees were eligible for vacation benefits on their anniversary date. The employee sought a prorata share of his vacation pay for the period between his last anniversary date and the date he was discharged; about three months before his next anniversary date.

The court held that the employee was entitled to his prorata share. Vacation pay, said the court, constitutes a form of deferred wages for services rendered. Thus, vacation vests as the employee's labor is rendered. Employees earn some vacation rights as soon as they perform substantial services for their employer and upon discharge, they are entitled to a prorata share of vacation pay for that portion of the year worked.

Section 227.3 also provides that an employment contract or employer policy that provides for paid vacations cannot waive the employee's right to vested vacation time upon termination. Note, however, that the employer and union can negotiate away, through collective bargaining, the employee's right to a prorata share of his/her vacation pay after termination of employment.

Generally, whether or not a union can waive employee rights conferred by statute depends either on: (1) express provisions of the particular statute, or (2) where there is no express provision, on Civil Code 3513, which provides that "Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement". See De Haviland v. Warner Bros. Pictures, 67 Cal. App. 2d 225 (1944).

LF/ak