

January 22, 1975

Dear :

This is in response to your letter of January 8, 1975. concerning a letter received from one of your constituents, , in regard to the Employee Retirement Income Security Act of 1974 (ERISA).

I have reviewed the documents submitted relating to a collectively bargained vacation fund covering members of his union Local Union . These documents indicate that a joint employer-union trust fund has been established to which employers pay nine percent of the gross pay of employees working under the collective bargaining agreement. The money transferred to the trust fund is subject to all taxes and payroll deductions on the same basis as take-home pay. The [employer] Association has informed the Union that the vacation fund "as now operated" would not comply with the terms of ERISA. The Association indicated its intention to include vacation fund payments in employees' weekly paychecks after December 31, 1974, rather than sending them to the trust fund.

The vacation fund is an employee welfare benefit plan, as defined in section 3(1) of ERISA. Under section 4(a), the fund is covered by the provisions of Title I of ERISA. This means that if the fund continues in operation, it must comply with certain rules and requirements designed to protect the interests of participants and beneficiaries. Reporting and disclosure of basic facts about the plan and its operation would have to be made, as provided in Part 1 of Title I. In

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general, the fiduciary duties of Part 4 of Title I would also apply to the plan, requiring those with control of assets to act prudently and for the exclusive benefit of participants and beneficiaries, and prohibiting certain types of transactions which the Congress found were subject to abuse.

From the facts submitted, I find no reason to believe that the Vacation Fund could not be brought into compliance with ERISA. There would doubtless be some costs involved in doing so. The final decision on whether to continue, drop or modify the fund is therefore not a legal one, but a practical matter for the parties to the collective bargaining agreement.

A copy of ERISA is enclosed. If I may be of any further assistance, please do not hesitate to write or call my office.

Sincerely,