

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20216



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OPINION 79-4 A

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Gentlemen:

This is in reply to your letters concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to sections 5 and 7 of the 1975 agreement between Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU). Specifically, you state that sections 5 and 7 of the 1975 PMA-ILWU agreement constitute a holiday pay plan and a vacation pay plan, respectively, and that the purposes of the plans are to compensate employees for hours during which they are on vacation leave or absent on holiday. You also state that longshore employers have established PMA as agent for all payroll purposes, including administration of the vacation pay plan and the holiday pay plan to which employers contribute the amount of holiday and vacation pay for which they are liable to employees under the 1975 PMA-ILWU agreement. You believe the holiday pay plan and the vacation pay plan you describe to be excluded from ERISA title I coverage. We regret the delay in responding to your inquiries caused by misrouting of incoming mail.

ERISA section 3(3), which defines the term "employee benefit plan", provides that a plan may be either an employee welfare benefit plan or an employee pension benefit plan. The term "employee welfare benefit plan" is defined in section 3(1) as " . . . any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)." The effect of ERISA section 3(1)(B) is to include within the definition of the term "employee welfare benefit plan" those plans which provide holiday and severance benefits and benefits which are similar.

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On August 15, 1975, the Department of Labor issued regulations which further clarify the definition of employee welfare benefit plan. A copy of these regulations is enclosed. Section 2510.3-1(b) of the August 15, 1975 regulations clarifies the definition of employee welfare benefit plan by listing certain payroll practices which do not constitute welfare plans within the meaning of ERISA section 3(1). Section 2510.3-1(b)(3) provides that payment of compensation "out of the employer's general assets, on account of periods of time during which the employee, although physically and mentally able to perform his or her duties and not absent for medical reasons (such as pregnancy, a physical examination or psychiatric treatment) performs no duties . . ." is a payroll practice excluded from the definition of employee welfare benefit plan. Listed among the examples of the payroll practice described in subparagraph (b)(3) is payment of compensation out of the employer's general assets "while an employee is on vacation or absent on a holiday . . ." (regulation section 2510.3-1(b)(3)(i)).

You will note that all payments described in regulation section 2510.3-1(b)(3) are excluded from the definition of employee welfare benefit plan only to the extent that they are paid from the employer's general assets. Payment of such compensation out of funds held separately from the employer's general assets is not excluded from the definition of employee welfare benefit plan by regulation section 2510.3-1(b)(3). Because regulation section 2510.3-1(b)(3) provides that only the payment of compensation out of the employer's general assets is excluded from the definition of employee welfare benefit plan and because benefits paid to the employees of participating employers by PMA pursuant to sections 5 and 7 of the 1975 PMA-ILWU agreement are paid from a separately maintained fund, the payment of vacation pay benefits and holiday pay benefits is not excluded from the definition of employee welfare benefit plan by regulation section 2510.3-1(b)(3).

Because sections 5 and 7 of the 1975 PMA-ILWU agreement provide for payment of vacation and holiday benefits (which are among the benefits included in ERISA section 3(1) defining employee welfare benefit plan) by a plan maintained by an employer, an employee organization, or both, and because payment of such benefits pursuant to sections 5 and 7 of the 1975 PMA-ILWU agreement are not excluded from the definition of employee welfare benefit plan by regulation section 2510.3-1(b)(3), the vacation and holiday pay plans established pursuant to the 1975 PMA-ILWU agreement are employee welfare benefit plans within the meaning of ERISA section 3(1).

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This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Plans which are employee welfare benefit plans within the meaning of ERISA section 3(1), and not otherwise excluded from ERISA title I coverage, must comply with parts 1, 4, and 5 of ERISA title I. Part 1 pertains to reporting and disclosure. Part 4 pertains to fiduciary requirements. Part 5 pertains to enforcement, claims procedures, administration, and prohibitions against interference with rights accorded by ERISA and against coercive interference.

Sincerely,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs

Enclosure