



OPINION 80-44A
3(1)

JUL 22, 1980

J.B. Nelson, Director
Compensation & Benefits
McDonnell Douglas Corporation
P.O. Box 516
St. Louis, Missouri 63166

Dear Mr. Nelson:

This is in response to your letter of April 10, 1980, requesting advice regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the sick leave benefit plans of the McDonnell Douglas Corporation (McDonnell) described as PN 508 Sick Leave Benefit Plan – Salaried MDC-West and PN 509 Sick Leave Benefit Plan – Salaried MDC-East (the Plans) are employee welfare benefit plans within the meaning of ERISA section 3(1).

You advise that McDonnell maintains the Plans as a means of providing short term disability income benefits to salaried employees. The Plans are unfunded and uninsured. Benefits are paid from the general assets of McDonnell. The Plans provide continued weekly income in the event that an eligible employee is absent from work because of sickness or injury for the duration of the disability up to a maximum of 26 weeks. Amount payable weekly are at the full weekly base salary for a certain maximum number of weeks, determined by an employee's years of credited service, with amounts payable for additional weeks (up to the maximum of 26) at one-half base weekly salary.

Section 4(a) of ERISA title I provides in relevant part, that title I applies to "... any employee benefit plan if it is established or maintained ... by any employer engaged in commerce or in any industry or activity affecting commerce ... or ... by both." Section 3(3) defines the term "employee benefit plan" or "plan" to mean an employee welfare benefit plan or an employee pension benefit plan or a plan which is both a welfare benefit plan and a pension benefit plan. Since there is no indication that the Plans would be employee pension benefit plans within the meaning of section 3(2), this letter will only address whether or not the Plans constitute employee welfare benefit plans.

Section 3(1) defines the term "employee welfare benefit plan" to mean "... 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)."

In your letter you contend that the Plans are payroll practices within the meaning of regulation section 2510.3-1(b)(2). Regulation section 2510.3-1(b)(2) provides that the term "employee welfare benefit plan" shall not include "[p]ayment of an employee's normal compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties or is otherwise absent for medical reasons (such as pregnancy, a physical examination or

psychiatric treatment)” It is the position of the Department that payment of less than normal compensation from an employer’s general assets during periods in which an employee is absent for medical reasons may, under certain circumstances, also constitute a practice that is not an employee welfare benefit plan. On the basis of your representations, it is the opinion of the Department that the Plans are not employee welfare benefit plans within the meaning of section 3(1) of ERISA.

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.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs