



July 16, 1993

Mr. William J. Bernstein
The Coca-Cola Company
P.O. Drawer 1734
Atlanta, Georgia 30301

93-20A
ERISA SEC.
3(1)

Dear Mr. Bernstein:

This is in reply to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Short-Term Disability Income Plan for Non-Exempt Employees of The Coca-Cola Company (the STD Plan) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You advise that the STD Plan was adopted by The Coca-Cola Company (the Employer) on December 26, 1979. Section 2 of the STD Plan provides that the STD Plan was adopted "to establish the terms and conditions under which all or a percentage of certain non-exempt employees' regular salary or wages will continue to be paid while those employees are unable to work as a result of suffering a bona fide illness, disability or injury." Section 5 of the STD Plan limits the employees eligible to participate to employees 1) whom the Employer classifies as non-exempt Regular, Part-Time, Limited Part-Time, and Seasonal employees, 2) who are not represented by a collective bargaining agent, unless the Employer and such agent agree that such employees shall be offered the opportunity to be covered by the STD Plan, and 3) who are assigned to specified domestic divisions, offices, departments, facilities, or components of the Employer. Under Section 9 of the STP Plan, the amount of an employee's benefits varies depending upon the employee's length of service and compensation, but in no event may the benefit exceed 100% of salary or wages for 52 weeks. Section 3 of the STD Plan provides that benefit payments shall be paid by the Employer from its general assets. The plan is neither funded nor insured.

The term "employee welfare benefit plan" is defined in section 3(1) of Title I of ERISA to include:

. . . 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 29 C.F.R. §2510.3-1, the Department of Labor (the Department) identified certain arrangements that would not be considered to constitute employee welfare benefit plans within the meaning of section 3(1) of ERISA. Specifically, regulation section 2510.3-1(b) provides, in pertinent part:

(b) Payroll practices. For purposes of Title I of [ERISA] and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include --

(2) Payment 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) ...

Based on the information you submitted, it is the position of the Department that the STD Plan is a payroll practice described in regulation section 2510.3-1(b)(2) and does not constitute an employee welfare benefit plan within the meaning of section 3(1) of ERISA. The benefits under the STD Plan are paid out of the Employer's general assets, are paid only for periods of time during which the employee is disabled and thus unable physically or mentally to perform his or her duties, and do not exceed the employee's normal compensation.

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

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

¹ Section 2 of the STD Plan also provides that at some future date domestic subsidiaries of the Employer may be permitted to adopt the STD Plan. Because your correspondence does not indicate that such domestic subsidiaries have been permitted to adopt the STD Plan for their eligible employees, this letter is based on the assumption that only employees of the Employer are permitted to participate in the STD Plan.