

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



AUG 12 1988

88-10A
Sec. 3(1)

Mr. J. Paul Jacobson
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Dear Mr. Jacobson:

This is in response to your letter concerning the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Dependent Care Assistance Plan (the Program) of Tropical Plant Rentals, Inc. (the Company). Specifically, you ask whether the Program constitutes an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

According to your letter and accompanying documents, under the Program the Company pays a portion of the child care expenses that employees incur in order to work for the Company. The Company does not provide or sponsor a day care center. Rather, employees generally can choose whatever day care arrangements they prefer and the Company either pays the provider or reimburses the employee. All such payments are made directly from the general assets of the Company; there is no trust fund established in connection with the Program. You indicate that the Program is intended to qualify under section 129 of the Internal Revenue Code (relating to exclusion of amounts from gross income of employees under dependent care assistance programs).

Section 3(1) of ERISA defines the term "employee welfare benefit plan" as:

...any plan, fund, or program ... 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 (emphasis supplied).

Section 302(c) of the Labor Management Relations Act, 1947, as here relevant, refers to ". . . a pooled or individual trust fund established . . . for the purpose of . . . child care centers for preschool and school age dependents of employees . . ."

Based on your representations that the Program provides for reimbursement for dependent day care services of the employee's choice, either directly to the provider or to the employee, and does not provide for a specific day care center, it would appear that these benefits are not of the type described in section 3(1) of ERISA. Consequently, the Department would not view the Program as an employee welfare benefit plan within the meaning of section 3(1).

This letter constitutes an advisory opinion under ERISA Procedure 76-1 Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,

Robert J. Doyle
Acting Director of Regulations and Interpretations