



Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES

October 13, 1998

Re: Inquiry No. 14547

This is in reference to your inquiry pertaining to Act No. 74 of June 30, 1995, which amended Act No. 17 of April 17, 1935. Your specific inquiry is as follows:

We write this letter with the purpose of obtaining your opinion regarding the provision in Act Number 74 of July 1, 1995 [sic] ("Act 74"), that sets forth that the employer must "provide" employees a stub which illustrates the direct deposit or transfer of salaries, based on the following facts.

A client of our office, a pharmaceutical manufacturing operation, contemplates the implementation of an innovative human resources system, based on the mechanization of many of the processes in this area, including the payment of salaries through a direct deposit system. Under the direct deposit system contemplated, the deposit (and availability of funds by the employees) would be effectuated on or before the day in which salaries are due.

Although the employer does not contemplate to "physically give" employees a payment stub in each period, the employees will have several readily accessible electronic kiosks in their area of employment, where they will be able to obtain information regarding certain employment matters, including the stub verifying the amount of their deposited salaries. The stub will become accessible the scheduled pay day and the employee will have the option of "printing" the stub. Additionally, the system will store information regarding previous deposits for a period which has not yet been determined, but which is estimated that will be of at least one (1) month, or four (4) full payroll cycles. The stub that the system prints will comply with Act 74 requirements, inasmuch as it will indicate the gross amount of

salaries, deductions authorized by law and the net amount deposited. Naturally, the direct deposit system will not entail any cost to the employees.

Based on these facts, we are of the opinion that the proposed system fully complies with Act 74 since the stub will be readily accessible to the employees, and the employees may print the stub, at no cost, at their own discretion. Additionally, the system will store deposit information for various [sic] payment periods and the stub that the system will print complies with Act 74 information requirements.

In light of the above, we would appreciate your formal opinion as to whether the direct deposit system, particularly the procedure proposed for the provision of the stub, complies with Act 74.

As you are aware, Section 1 of Act No. 74, *supra*, authorizes payment of wages by direct deposit or electronic funds transfer (EFT) on a voluntary basis, i.e., each employee must consent to payment on that basis, and the employer may not compel any employee to grant such consent. Act No. 74 further provides, as you point out, that "the employer must provide each employee with a voucher showing the salary deposited or transferred to the employee's checking or savings account" [our translation].

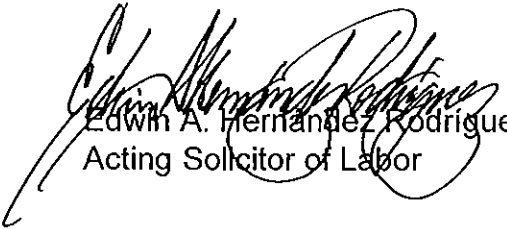
It thus appears that the issue to be resolved is whether the system your client proposes to implement complies with the spirit and the letter of Act No. 74. It is important to note that in enacting this amendment to Act No. 17, *supra*, the stated legislative intent was to amend an outdated law that "did not take into account technological advances, modern financial and banking systems with easy access that are now available and which offer continuous services with beneficial conditions and security for both the employee and the employer." [our translation]

In brief, it is clear that our lawmakers intended to make the law flexible enough to enable both employees and employer to take advantage of the benefits of direct deposit and EFT. In that context, a literal interpretation of the provision that requires the employer to provide a voucher that reflects wages paid would seem inconsistent with that objective, particularly when the proposed system itself reflects a further advance in technology. Moreover, you indicate that the information provided goes beyond Act No. 74 requirements, as it furnishes data for several pay periods.

In the simplest terms, in the traditional system the employer relies on an agent or intermediary to deliver the voucher to the employee at the time payment is effected. In the proposed system, the employer issues the required voucher to the employee through the medium of an electronic kiosk, which thus becomes the employer's intermediary in achieving the same purpose. For the foregoing reasons, we do not believe that the wording of Section 1, *supra*, rules out a system in which the required voucher is provided by the procedure you describe.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm that is under investigation by the Bureau of Labor Standards of this Department, or that is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with the provisions of any law enforced by this Department.

Cordially,



Edwin A. Hernandez Rodriguez
Acting Solicitor of Labor