

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:  
Pension and Welfare Benefit Programs

OPINION 81-71A  
Sec. 3(1)

SEP 11 1981

Mr. William F. Gleason, Jr.  
Vice President, Secretary and Counsel  
The Continental Corporation  
80 Maiden Lane  
New York, New York 10038

Dear Mr. Gleason:

This is in reply to your letter of May 19, 1981, concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the Salary Continuance Plan of The Continental Corporation (the Corporation) and certain of its affiliates. Specifically, your inquiry concerns whether the program of salary continuance constitutes a mere payroll practice within the meaning of 29 C.F.R. §2510.3-1(b)(2) rather than an employee welfare benefit plan described in ERISA section 3(1) and, thus, is excluded from coverage by title I of ERISA.

In response to inquiries from the Department concerning your letter, we were advised by Mr. John J. Hess by telephone that the Corporation is a holding company and approximately 66 domestic subsidiaries (affiliates) are in its controlled group of corporations. It is the current policy to provide payments to eligible employees at a rate less than or equal to normal compensation during absences of a specified minimum duration due to inability to work as a result of illness or accident. The program is unfunded and uninsured. Employees eligible for payments include all full-time or regular part-time employees of the Corporation and of certain of its affiliates who are credited with at least 6 months of continuous service. Mr. Hess advised by telephone that salary continuance payments are made from the general assets of the Corporation to eligible employees on its payroll and from the general assets of each affiliate to eligible employees on its payroll. Absences eligible for salary continuance must be of at least 8 days duration. Payments continue until the employee returns to work or reaches the maximum length of absence for which payments will be provided. The maximum duration of payments is based on years of service as specified in a benefit schedule. The benefit schedule also specifies the percentage of the employee's salary to be paid for each week of absence. For example, an employee with 6 months to less than a year of service will receive a total of 1 week of compensation at 75 percent of salary. The number of weeks of payment at the 75 percent rate increases with years of service, and weeks at 100 percent of salary are paid to employees for the

initial weeks of their absence as their years of credited service increase. Thus, an eligible employee with 10 or more years of service will be paid for 10 weeks at 100 percent of salary and an additional 15 weeks at 75 percent of salary. Twenty-five (25) weeks of payments are the maximum benefit available to any employee under the benefit schedule. Payments are reduced by the amount an eligible employee receives from workers' compensation, disability benefits provided under a state program, or any other group benefit plan to which the Corporation or affiliates contribute.

In no event will payments from all sources provided by the Corporation exceed 100 percent of the covered employee's salary. Salary is defined as an employee's basic salary at the time of illness and excludes overtime earnings, bonuses, commissions, fees or any other forms of extra compensation.

Section 3(1) of ERISA in relevant part defines the term "employee welfare benefit plan" 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 ... benefits in the event of sickness, accident, disability ...."

Department of Labor regulation section 2510.3-1 identified certain practices that would not be considered employee welfare benefit plans within the meaning of ERISA section 3(1). Specifically, regulation section 2510.3-1(b)(2) provides that the term "employee welfare benefit plan" will 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) ...."

On the basis of your representations and those of Mr. Hess, it is the position of the Department that the Corporation's and affiliated companies' payments to employees of no more than normal compensation for periods of time that an employee is absent for medical reasons, constitute a payroll practice within the scope of regulation section 2510.3-1(b)(2). Accordingly, on the basis of your representations and those of Mr. Hess, it is the position of the Department that the policy of continuing the salary of employees of the Corporation and its affiliated companies during periods of inability to work up to a maximum of 25 weeks is not an employee welfare benefit plan under ERISA title I.

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.

As you have been informed, it is not the Department's practice to delete mere identifying information from its advisory opinions or from the background files from which the opinions result. The Department's rule on information which is "proprietary" and subject to deletion in

accordance with section 12.03 of Procedure 76-1 is narrowly construed and does not include information which merely identifies the inquirer.

Sincerely,

Ian D. Lanoff  
Administrator  
Pension and Welfare Benefit Programs