

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-56A
Sec. 3(1)

OCT 29 1982

Ms. Susan J. Benely
Quinn, Jacobs & Barry
Suite 1425 LaSalle Bank Building
135 South LaSalle Street
Chicago, Illinois 60603

Dear Ms. Benely:

This is in reply to your letter of June 1, 1982, and your subsequent letters of June 11 and June 15, 1982, to the Department of Labor (the Department), concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the proposed wage continuation plans (the "Plans") of International Metals & Machines, Inc. (IMM), and certain of its affiliates. Specifically, your inquiry concerns whether the IMM's program of wage continuation and the programs of certain of its affiliates specified in your letters of June 11 and June 15, 1982, constitute 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, excluded from ERISA title I coverage.

The following representations were made in connection with your request for an advisory opinion. IMM and certain of its affiliated companies specified in your letters of June 11 and June 15, 1982, propose to establish programs to provide weekly income 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 sickness or injury of a non-occupational nature. Amounts payable weekly will be computed at a percentage of the employee's full weekly base salary up to a specified amount which will vary with each company's plan. The Plans will be unfunded and uninsured. Payments will be made from the general assets of each employer to all eligible employees on its payroll and will continue for the duration of the inability to work as a result of sickness or injury of a non-occupational nature, up to a maximum of anywhere between 13-39 weeks, depending again upon the particular employer's plan.

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"

The Department's 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)"

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. Accordingly, on the basis of your representations, it is the position of the Department that IMM's proposed policy of continuing the salary of its employees and each affiliates' policy of continuing the salary to its own employees during periods of inability to work because of sickness or injury, up to a maximum of 13-39 weeks, would not constitute employee welfare benefit plans 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.

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs