

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 83-37A  
Sec. 3(1)

JUL 18 1983

Mr. Earl B. Pulse  
Assistant General Counsel  
Cummins Engine Company, Inc.  
Box 3005  
Columbus, Indiana 47201

Dear Mr. Pulse:

This is in reply to your letter of January 18, 1982, and subsequent correspondence from B.J. Warren, Esq., dated August 16, 1982, concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to a Salary Continuance Plan (the Program) of Cummins Engine Company (the Company). Specifically, your inquiry concerns whether the Program constitutes a mere payroll practice within the meaning of regulation 29 C.F.R. §2510.3-1(b)(2) and is thus excluded from title I of ERISA.

According to your correspondence, the Program's purpose is to provide short term disability income benefits to salaried employees. Thus, the Program provides continued weekly income in the event an eligible employee becomes disabled to the extent of not being able to perform the duties of a currently held position or of other positions commensurate with the employee's abilities. In response to our request for a document embodying the policy you described, we received the "Cummins Practice" which states its purpose is to document and report illness or injuries of employees, to set up return to work procedures, and to provide documentation for the employee's tax return.

The Program is uninsured and payments are made from the employer's general assets. Under the Program, the employee gives notice of inability to perform duties due to illness or injury and the appropriate supervisor files a report with the Company's Employee Benefits Department. As a result, for absences of 10 days through 6 months, certain payments are guaranteed by the Company to the covered employee: full monthly basic salary for the initial 3 months of absence and 75 percent of basic salary for any remaining period up to 6 months. Apparently, all eligible employees without regard to their previous length of employment are entitled to payments at these rates for the duration of illness or injury or for 6 months, whichever is less. No sick leave *per se* is earned, granted, accumulated, or used in connection with the payments made to employees absent from duties due to illness or injury. After 6 months, payments under the Company's Program terminate. At that time, an eligible employee enrolled in the Contributory Long Term Disability Income Plan may begin to receive benefits under that program. The Cummins Practice also covers benefits for work-related injury. Workmen's Compensation benefits for which an employee qualifies are deducted from any payments made by the Company under the Program.

For those employees who return to work at the Company's Columbus operations, the

Company requires a release through the Company's medical department. Employees at other locations must submit a signed licensed medical doctor's release to the Employee Benefits Department.

Section 3(1) of ERISA provides that the term "employee welfare benefit plan" means, "... 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)."

Regulation section 2510.3-1(b)(2) determined that the term "payroll practice" would encompass the following:

(b) For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include --

(1) Payment by an employer of compensation on account of work performed by an employee, including compensation at a rate in excess of the normal rate of compensation on account of performance of duties under other than ordinary circumstances, such as --

- (i) Overtime pay,
- (ii) Shift premiums,
- (iii) Holiday premiums,
- (iv) Weekend premiums;

(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).

The Program you describe incorporates the elements of the payroll practice described in regulation section 2510.3-1(b)(2) because payments are made from the employer's general assets, are no greater than an employee's normal compensation, and are due to illness or injury resulting in an employee's absence from duty. Thus, the Program is a payroll practice described in regulation section 2510.3-1(b)(2). Accordingly, the Company need not comply with the requirements of title I of ERISA applicable to employee welfare benefit plans.

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