

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



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85-23A
Sec. 3(1)

Allen M. Salomon
Attorney at Law
Swietlik & Petajan
611 E. Wisconsin Avenue
Milwaukee, Wisconsin 53202

Dear Mr. Salomon:

This is in reply to your letters on behalf of Vulcan Lead Products Company (the Company) requesting an advisory opinion from the Department of Labor (the Department) regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Vulcan Lead Products Co. Short Term Disability Benefit Plan (the Program). Specifically, your inquiry concerns whether the Program constitutes a payroll practice within the meaning of 29 C.F.R. §2510.3-1(b)(2) rather than an employee welfare benefit plan described in section 3(1) of ERISA and is thus excluded from ERISA title I coverage.

You state that the Program will provide a weekly income to employees who become totally disabled due to illness or accident. The benefit will vary according to job classification, length of service with the company, and compensation. The maximum benefit payable under the Program is to the job classification of "President" at a rate of 100 percent of compensation for a period of 13 weeks. You further state that the Program will be unfunded and uninsured, and that the source of benefits to be paid out of the Program would be paid from the general assets of the Company.

The document entitled "Vulcan Lead Products Co. Short Term Disability Benefit Plan" provides that, with certain specific limitations, all full-time regular office and shop employees who have completed 1 year of continuous full-time employment with the Company would be eligible for benefits under the Program in the event of disability. Further, the document defines the term "compensation" on which disability benefits are calculated to mean an employee's basic pay for a 40-hour week excluding overtime pay. In accordance with a schedule of benefits set forth in the subject document, disability benefits are provided to three distinct groups of employees working at the Company. Benefits are provided to the group consisting of office and shop employees which range from a minimum benefit period of 2 weeks at a rate of 60 percent of compensation for the first week and 50 percent of compensation for the second week, for those employees with 1 year but less than 2 years of service with the Company; and to a maximum benefit period of 13 weeks at a rate of 60 percent of compensation for the first 7 weeks and 50 percent of

compensation for the remaining 6 weeks, for those employees with 5 or more years of Company service. Benefits under the Program are provided to the employee group comprised of accountants, foremen, and salesmen which range from a minimum benefit period of 2 weeks at a rate of 60 percent of compensation for those employees with 1 year but less than 2 years of service with the Company, and to a maximum benefit period of 13 weeks at a rate of 60 percent of compensation for those employees with 5 or more years of service with the Company. With respect to the employee group consisting of managers and the President of the Company, disability benefits under the Program are provided, without regard to length of service with the Company, to the general and production managers for a benefit period of 13 weeks at a rate of 70 percent of compensation; and to the President of the Company for a benefit period of 13 weeks at a rate of 100 percent of compensation.

Regulation section 2510.3-1(b) provides in relevant part:

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

(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

The Program you describe incorporates the elements 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 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,

Elliot I. Daniel

Acting Assistant Administrator for Regulations and Interpretations