



September 30, 1992

Mr. Wayne W. Wisong
Constangy, Brooks & Smith
Suite 2400
230 Peachtree Street, N.W.
Atlanta, Georgia 30303-1557

92-18A
ERISA SECTION
3(1)

Dear Mr. Wisong:

This is in reply to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the proposed Simmons Company Short-Term Disability Plan (the STD Plan) would be an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You advise that the STD Plan will provide weekly income to certain non-bargaining unit employees unable to perform their regular duties due to illness, injury, or accident. The benefit to be paid under the STD Plan will vary depending upon the employee's length of service. The minimum benefit will be 100% of compensation for two weeks and 60% of compensation for 24 weeks for employees with between one and two years of service. The maximum benefit will be 100% of compensation for 9 weeks and 60% of compensation for 17 weeks for an employee with twelve or more years of service. The benefits will be paid solely by the employer out of its general assets.

Section 3(1) of Title I of ERISA defines the term "employee welfare benefit plan" to include:

... any plan, fund, or program which was hereto-fore 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 sick-ness, 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).

Thus, section 3(1) of Title I of ERISA would generally include any program established or maintained by an employer which provides benefits in the event of illness, accident or injury within the definition of an employee welfare benefit plan.

However, in regulation 29 CFR §2510.3-1, the Department of Labor (the Department) identified certain practices which would not constitute employee welfare benefit plans within the meaning of section 3(1) of Title I of ERISA. Specifically, §2510.3-1(b) provides, in pertinent 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 (such as pregnancy, a physical examination or psychiatric treatment); ...

Based on the information contained in your request, including the representation that no more than the employees' normal compensation will be paid on account of periods of disability, it is the view of the Department that the STD Plan is a payroll practice described in §2510.3-1(b)(2). Accordingly, the STD Plan would not be an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA and would not be covered by that Title.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations