

U.S. Department of Labor

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



Reply to the Attention of:
Pension and Welfare Benefit Programs

OPINION NO. 82-15A
Sec. 4(b)(3)

MAR 8 1982

Mr. Douglas M. Case
Corporate Counsel
Taco Bell
17381 Red Hill Avenue
Irvine, California 92714

Dear Mr. Case:

This is in reply to your letter concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to a voluntary unemployment compensation disability plan of Taco Bell and Bell Food Services, Inc., administered according to applicable provisions of the California Unemployment Insurance Code (CUIC). Your request concerns coverage of the plan you describe under title I of ERISA.

The following facts and representations are the basis for your request. Taco Bell and Bell Food Services, Inc. (the Company), are headquartered in the State of California and are wholly-owned subsidiaries of PepsiCo, Inc., a Delaware corporation. A significant number of the employees of the Company are located in California. CUIC established and provides for the administration of a mandatory state system of unemployment compensation disability benefits. Under the state plan, employees are required to pay a percentage of their compensation up to a dollar limit (for 1981, 0.6 percent up to \$14,900) to a fund operated by the state which pays benefits in the event an employee is disabled and cannot work. Applicable provisions of the CUIC permit the establishment of voluntary plans administered by employers as alternatives to the state plan if they are in compliance with state law and have been approved by the California Employment Development Department. In order to substitute a voluntary plan for the state plan, the CUIC requires that the rights afforded to covered employees be greater than those provided under the state plan (CUIC §3254(a)). In addition, under the voluntary plan employees cannot be charged more than the current state plan tax rate (but they can be charged less) and any cost benefits from operating the plan must inure to the benefit of participants (e.g., by reducing future premiums or increasing benefit levels).

In 1980, the Company established a voluntary plan which was approved by the State of California as an alternative to the state plan. You enclosed the Certificates of Approval issued by

the California Employment Development Department with your submission. As with the state plan, under the Company's plan the employees pay the full cost of the unemployment compensation disability benefits through payroll deductions. The amount presently paid by employees matches the amount they would be paying under the state plan. Each month the Company sends a check to Voluntary Plan Administrators, Inc. (VPA), an independent corporation which administers the Company's plan and similar plans established by other corporations. When an employee files a claim under the Company's plan, the claim is filed with VPA, which verifies the nature of the claim and makes the benefit payments to the claimant from the account it has established for the plan. The State of California receives regular informational filings from VPA regarding claims under the Company's plan and the Company has posted a bond with the state to guarantee payment of claims to its employees. Also, the Company's plan permits an employee to elect not to participate; in such a case the employee is automatically covered under the state plan and makes payments into such plan.

As noted above, the CUIC requires an employer's voluntary plan to provide greater rights than the state operated plan. The Company's plan provides greater rights than the state plan primarily in three areas related to the provision of disability benefits:

1. The voluntary plan established a maximum benefit period of 45 weeks for any one disability as opposed to a 39-week maximum period under the state plan.
2. The voluntary plan adopts a benefit calculation based on wages for salaried employees which averages out slightly higher than under the state plan (although the state plan schedule is adopted for hourly employees).
3. The greatest benefit an eligible claimant may qualify for under the voluntary plan is \$163 per week versus \$154 per week under the state plan. In all other material respects, the voluntary plan is identical to the state plan.

Section 4(b)(3) of ERISA excludes from ERISA title 1 coverage any employee benefit plan which is "maintained solely for the purpose of complying with applicable ... disability insurance laws." Based on your representations that the Company's voluntary unemployment compensation disability plan is now operated solely to provide those benefits mandated for the Company's employees by the CUIC, and that these benefits are disability benefits, the Company's voluntary plan as now operated is excluded from ERISA title I coverage by section 4(b)(3) of ERISA.

You also question the further applicability of the exclusion in section 4(b)(3) of ERISA if the Company's plan provides additional benefits as proposed because of favorable claims experience. You state that California law requires that any cost savings from the operation of the plan be used for the benefit of plan participants and that you believe that the additional benefits result solely from the CUIC requirement that cost savings from the operation of the plan be used for benefit of the participants. If the CUIC requires any cost savings to be used for additional benefits, and if the benefits the Company proposes to offer are disability benefits, the

Department's opinion concerning the plan would remain unchanged. However, to the extent that any additional benefits are not in the nature of disability benefits, the inclusion of such benefits would remove the plan from the section 4(b)(3) exclusion.

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