

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



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ERISA OPINION 90-03A  
Sec. 4(b)(3)

Ms. Jill Madison  
Staff Attorney  
Mercer-Meidinger-Hansen, Inc.  
P.O. Box 7440  
San Francisco, California 94120

Dear Ms. Madison:

This is in reply to a letter regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the voluntary unemployment compensation disability plan (the Plan) of the Measurex Corporation, Measurex Systems, Inc., and Measurex Automation Systems, Inc., three members of the Measurex Controlled Group, hereafter referred to collectively as Measurex. Specifically, the request for an advisory opinion asks whether the Plan is excluded from coverage under title I of ERISA by section 4(b)(3) of ERISA.

The following facts and representations are the basis for the request. Measurex is headquartered in the State of California. A significant number of the employees of the Measurex companies which have adopted the plan are located in California. All employees eligible for the plan are located in California. The Plan is administered according to the applicable provisions of the California Unemployment Insurance Code (CUIC). 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 1987, 1.2 percent up to \$21,900) 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. Section 3254 of the CUIC sets forth the requirements for approval of voluntary plans including the requirement that the rights afforded to covered employees be greater than those provided under the state plan. 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).

The letter stated that in 1987 Measurex established a voluntary plan solely to provide those benefits mandated for its employees by the CUIC. The Plan was approved by the State of California as an alternative to the state plan. You have enclosed with your submission the Certificates of Approval issued by the California Employment Development Department. As with the state plan, the Plan operates through payroll deductions for the unemployment compensation disability benefits. For the 1987 plan year, employees paid 1.0 percent of the first \$21,000 of annual compensation (.2 percent less than under the state plan). If this amount is insufficient to pay benefits under the plan, Measurex will contribute the additional amounts needed. Each quarter Measurex sends a check to Oliver & Larkin, an independent corporation which administers the Plan and similar plans established by other corporations. When an employee files a claim under the Plan, the claim is filed with Oliver & Larkin, 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 Oliver & Larkin regarding claims under the Plan. In addition, Measurex has posted a bond with the state to guarantee payment of claims to its employees. The Plan permits an

employee to elect not to participate; in such 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 those afforded under the state plan. The Plan provides greater rights than the state plan primarily in two areas related to the provision of disability benefits:\*

1. The maximum weekly benefit under the Plan is \$1,846.15, significantly higher than the \$224 maximum weekly benefit under the state plan.
2. Participants in the Plan contribute 1.0% of the first \$21,900 of annual earnings, .2% less than the 1.2% required by the state disability plan.

In all other material aspects, the voluntary Plan is identical to the state plan.

Section 3(1) of ERISA 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 ... for the purpose of providing for its participants or their beneficiaries, through the purchase or insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . . ."

However, section 4(b)(3) of ERISA excludes from ERISA title I coverage any employee benefit plan which is "maintained solely for the purpose of complying with applicable . . . disability insurance."

Based on your representations that the Plan is currently operated solely to provide those benefits mandated for Measurex's employees by the CUIC, and that these benefits are disability benefits, it is the position of the Department of Labor that the Plan as currently operated is excluded from ERISA title I coverage by section 4(b)(3) of ERISA.

As noted in Advisory Opinion 82-15A, if the CUIC requires any cost savings to be used for additional benefits, and if the additional benefits Measurex would offer are disability benefits, this 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,

Robert J. Doyle  
Director of Regulations and Interpretations

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\* The dollar and percentage amounts that follow are based on the information set forth in the 1987 request letter. We understand that the amount of employee contributions mandated by the state may vary from year to year. Accordingly, this opinion is based on the 1987 information submitted. In a telephone conversation with a representative of this Office, you indicated the figures have not changed through 1989.