

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

RACHELLE HONEYCUTT & GABRIEL
WESTERGREEN,

Determination of Compliance No. 01-17-
PL and 02-17-PL,

OAH Docket No. 2017-LI-00585.

NO. 2018-024-PL

DIRECTOR'S ORDER DENYING
MOTION FOR
RECONSIDERATION

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the November 5, 2018 motion to reconsider the October 25, 2018 Director Order, which was filed by Intervenor Phillips 66 Company and the response filed by Rachelle Honeycutt and Gabriel Westergreen, issues this Order.

None of Phillips 66 Company's newly provided authority changes the result in this case. And recent case law confirms that when determining whether there is a payroll practice, the analysis focuses on the specific benefit at issue:

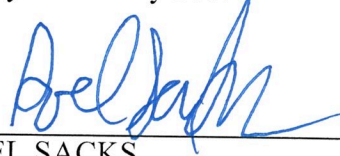
As a preliminary issue, Nationwide argues the Court should examine the Plan as a whole (the Your Time Program together with the short-term and long-term disability benefits) in determining whether ERISA applies. Nationwide Opp'n and Cross-Mot. 1-2. On the contrary, Ninth Circuit case law suggests that the inquiry of whether the payroll practices exemption applies is focused on the particular benefit at issue. *See, e.g., Alaska Airlines, Inc., v. Oregon Bureau of Labor*, 122 F.3d 812 (9th Cir. 1997) (analyzing whether payroll practice exemption applies to employer's system for payment of sick leave); *Bassiri v. Xerox Corp.*, 463 F.3d 927 (9th Cir. 2006) (analyzing whether payroll practice exemption applies to

employer's plan for payment of long-term disability benefits); *see also Clay v. AT & T Commc 'ns of California, Inc.*, No. 2:12-CV-2027-JAM-KJN, 2012 WL 5868767, at *5 (E.D. Cal. Nov. 19, 2012), report and recommendation adopted, No. 2:12-CV-2027-JAM-KJN, 2012 WL 6560729 (E.D. Cal. Dec. 14, 2012) (holding that while the defendant's "Umbrella Plan and the Disability Program f[e]ll squarely within ERISA" the "appropriate focus of the [payroll practice exemption] analysis is the particular benefit at issue."). The Court thus focuses its inquiry on the vacation benefits of the Your Time Program.

Mostajo v. Nationwide Mut. Ins. Co., No. 2:17-CV-00350-JAM-AC, 2018 WL 5979603, at *4 (E.D. Cal. Nov. 14, 2018).

Therefore, the motion for reconsideration is DENIED.

DATED at Tumwater, Washington this 8 day of January 2019.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DENYING MOTION FOR RECONSIDERATION was mailed on the 8 day of January 2019, to the following via regular, postage prepaid U.S. Mail:

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DATED this 8 day of January, 2019, at Tumwater, Washington.

Lisa Deck

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