



“If in Doubt, Write it Out” Now Holds for Commissioned Sales Staff
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For many years, human resource professionals have been preaching the need to have documentation on all employee issues. Offer letters are being prepared more often to ensure that all parties are aware of their compensation, performance issues require ongoing documentation in the event a separation occurs and now employers must document their agreements with commissioned staff.

As of October 16, 2007, New York State law requires that employers place the terms of employment for commissioned salespeople in writing. This is an amendment to New York State Labor Laws. This law has to do with frequency, contracts and payment of sales commissions, wage deductions, recordkeeping requirements and many other issues related to pay. Section (c) specifically has to do sales commissions. It states that when a sales representative separates employment, payment of earned commissions must be made within five business days after they become due and earned commissions shall be paid at the usual place of payment unless the sales representative requests payment through the mail. It now also includes the following:

- A description of how wages, salary, draw on commissions, commissions and all other amounts earned and payable are to be calculated
- The frequency of reconciliation between draw and earned commissions, where the writing provides for a recoverable draw
- Details regarding payment of wages, salary, draw, commissions and all other monies earned and payable in case of termination of employment by either party
- The agreement must be retained by the employer for three years and to make it available to the Department of Labor upon request
- Commissioned salespeople must be paid at least once a month and upon request, the salesperson must get a statement of earnings paid or due but unpaid

A failure to draft this writing or update an existing writing will create a presumption that the terms of employment as described by the sales representative are accurate and not the employer’s description. In addition, failure to comply with section (c) may result in civil penalties for double damages.

This change has come about because the Department of Labor has struggled with knowing when commissions are due where there is no agreement in writing. Employers should review their existing commission agreements to ensure compliance and to also ensure that there is an “at-will” employment statement included in the agreement.

In one more instance, “If in doubt, write it out”!

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