

Employer • Alert

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WRITTEN AGREEMENTS FOR COMMISSIONED SALESPEOPLE

The New York State Legislature recently amended Labor Law § 191(c) to require the terms of a commissioned salesperson's employment to be set forth in a written agreement signed by both the employer and the salesperson. Effective October 16, 2007, employers must reduce to writing the terms of any commissioned salesperson's employment, including (1) a description of how wages, salary, drawing account, commissions and all other monies earned and payable are calculated; (2) the frequency of reconciliation of any recoverable draw; and (3) details pertinent to payment of wages, salary, drawing account, commissions and all other monies earned and payable in the case of termination of employment by either party. The new legislation also requires that the written agreement be kept on file by the employer for at least three years.

If an employer fails to produce such a written agreement during a Department of Labor investigation, a presumption will arise that the terms of employment presented by the commissioned salesperson are accurate. To avoid the risk of adverse findings by the Department of Labor, employers should immediately memorialize all agreements with existing and prospective commissioned salespersons, and review existing written agreements to ensure that they are in compliance with the new law.

QUESTIONS OR ASSISTANCE?

If you have any questions about written agreements for commissioned salespeople, please contact Eric Lubochinski at (203) 324-8154 or Robin Frederick at (203) 324-8114.

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