



RECENT AMENDMENTS TO THE NEW YORK STATE LABOR LAW

There have been a number of important amendments to the New York State Labor Law signed into law by Governor Elliott Spitzer throughout 2007. Described below are several important amendments that take effect during the fourth quarter of 2007 and the first quarter of 2008.

WRITTEN AGREEMENTS REQUIRED FOR COMMISSIONED SALES PERSONNEL

Among the amendments to the wage payment provisions of the Labor Law are requirements concerning wage arrangements for commissioned salespersons. Effective October 16, 2007, employers are required to put the agreed terms of employment with commissioned salespersons in writing. *See* New York Labor Law § 191(c). Under the amendment, the written agreement must include:

- A description of how wages, salary, drawing account, commissions and all other monies earned and payable are calculated;
- The frequency of reconciliation between draws and earned commissions where the written agreement provides for a recoverable draw; and
- Details regarding the 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 written agreement must be signed by both the employer and the commissioned salesperson, and must be retained by the employer for at least three years. In addition, the written agreement must be made available to the Commissioner of Labor upon request.

If an employer fails to produce a copy of the agreement upon the request of the Commissioner, it will be presumed that the terms of the agreement as described by the commissioned salesperson are in fact the agreed upon terms. As a result, an employer who fails to reduce an the terms of employment with a commissioned salesperson to writing, or neglects to retain the agreement on file, acts at its peril if the salesperson later challenges the employer's payment of wages or other monies owed as being in violation of the agreement or the Labor Law.



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ADMISSIONS INFORMATION

by state, follows respective attorney name

WHAT SHOULD EMPLOYERS DO?

All employers of commissioned salespersons in New York State should immediately review and revise any existing agreements with their commissioned salespersons to ensure compliance with these new legal requirements. Written agreements are required to specifically address **all** relevant compensation arrangements with the salespersons including, for example, the event upon which the commission is based. Any oral agreements with existing commissioned salespersons should be put in writing in accordance with the amendment.

OTHER AMENDMENTS TO THE WAGE PAYMENT PROVISIONS OF THE NEW YORK STATE LABOR LAW:

- Effective January 14, 2008, Section 190(7) of the Labor Law increases the weekly wage threshold that exempts certain executive, administrative and professional employees from the definition of "clerical and other worker" from \$600 to \$900.
- Also effective on January 14, 2008, Section 192(2) of the Labor Law is amended to provide that executive, administrative, and professional employees are exempt from the prohibition against the direct deposit of an employee's wages without consent only if they earn at least \$900 per week. The current threshold necessary for obtaining consent is \$600 per week.

OTHER AMENDMENTS TO THE LABOR LAW:

- Effective immediately, employers now face civil monetary penalties, in addition to the existing criminal penalties, for violations of the Labor Law's mandatory day of rest and meal break requirements. Employers are subject to civil fines of up to \$1,000 for a first violation, \$2,000 for a second violation, and \$3,000 for a third or any subsequent violations.

If you have any questions regarding these recent amendment to the New York Labor Law or any other employment-related issues, please contact John M. Monahan at 716.843.3870 or jmonahan@jaeckle.com, or Elizabeth Fox-Solomon at 716.843.3836 or efoxsolomon@jaeckle.com.