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Midwest

New Wisconsin Statute Protects Members of "Traveling Sales Crews"

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In April 1999, seven young people were killed in a car accident near Janesville, Wisconsin. The people killed, along with five others who were injured, were members of traveling sales crew that had been hired to do door-to-door sales. Ten years later, Wisconsin Governor Jim Doyle signed into law the strictest requirements in the nation for traveling sales crews. The law, which goes into effect on April 1, 2010, imposes a range of rules on companies that hire salespeople to travel in groups of two or more to sell consumer goods or services. Because of the strict requirements imposed by the new law, some companies may reevaluate their use of traveling sales crews in Wisconsin. Forcing traveling sales crews out of the Wisconsin market is the avowed goal of some of the proponents of the bill, who are also pushing for national legislation. Although similar statutes has been proposed in the United States Congress in the past, there does not appear to be any new legislation on the horizon. It remains to be seen if other states will follow suit.

Requirements of the Law

The Wisconsin law is aimed squarely at protecting young people, like those killed in 1999, who travel away from home as part of sales crews to sell magazines, cleaning supplies, investment and business opportunities, personal training courses and other goods and services door-to-door. It is also intended to protect consumers who may receive sales calls. The true scope of the law has yet to be seen.

The new law applies to sales workers who travel in groups of two or more and stay overnight away from home to sell consumer goods and services. Accordingly, it does not apply to salespeople who sell to businesses or governmental bodies. Nor does it apply to workers who travel together to participate in a trade show or convention or who sell consumer goods or services from a fixed location at a concert, festival, carnival, street fair, public exhibition, or other special event. Also, the statute specifically exempts family members who travel together and people involved in fund-raising for nonprofit organizations like the Girl Scouts. Clearly, however, it will apply to people beyond students hired for summer jobs.

Traveling sales crew workers to whom the law applies receive a variety of protections. First, they will be considered employees, not independent contractors, even if they would prefer to retain independent contractor status. As employees, they will receive much broader protections than most employees and will also be subject to additional requirements for conducting their work.

When a company makes a job offer to an applicant for a traveling sales crew position, it must provide a written disclosure. Upon hire, the company and the employee must sign the disclosure, which must indicate:

- o the place of employment;
- o details of compensation, including wage rates, commissions, bonuses, and contest awards;
- o the type of work to be performed;
- o pay periods;
- o the number of days and hours per week to be required;
- o the nature, frequency, time of day, and manner of compensation for any company meetings;
- o the approximate start and end dates of employment;
- o a description of the board, lodging, and other facilities to be provided by the employer and any costs to the employee;
- o a description of the transportation to be provided to the employee;
- o details regarding any hazardous materials to be transported with the employee; and
- o whether workers' compensation will be provided, and, if so, contract information about workers' compensation.

An employer may change the terms of the disclosure statement, but cannot do so without obtaining the signature of the traveling sales crew workers.

The new law contains a number of provisions that are clearly meant to protect younger workers, but that apply to all members of traveling sales crews. For example, companies may not hire people under the age of 18 to be members of traveling sales crews. Such employees must not be required to work before 9 a.m. or after 9 p.m. Companies may not require traveling sales workers to purchase goods or services directly from the company, except for board and lodging. Companies may not abandon traveling sales workers who are unable to work due to illness or injury or have been arrested because they do not have proper identification under the statute. Nor may companies require workers to relinquish their personal property or restrict workers from contacting family members or friends. Companies must not inflict bodily harm or threaten employees and must not advise workers to lie about the products they are selling. Members of traveling sales crews are also protected from retaliation for attempting to assert their rights under the law.

The new law also provides rules for wage payment that exceed the requirements for most other employees. Traveling sales crew workers must be paid on regular paydays, not less often than semimonthly. Deductions for board and lodging are limited and must be disclosed and authorized by the sales crew member in advance. An itemized pay stub must be provided, listing each deduction made, and the employer must maintain a copy of these records for three years after the worker leaves the company.

Companies that employ such "sales crews" must register with the state and obtain a certificate of registration. They must also show proof of insurance and complete an in-depth application and background check on all traveling sales workers.

Members of traveling sales crews must have a permit and identification card from the state, which must be carried during working hours. Employers are required to keep a copy of the permit for three years after an employee leaves the company. Additionally, employers must keep a list of all cities where traveling sales persons are employed for the past three years, and a list of cities that the employer intends to send salespersons in the next six months.

Companies must also essentially obtain permission from each city, village, or town to which they deploy traveling sales crews. Before sending a traveling sales crew to a location, the company must obtain from the city, village, town a stamp or endorsement on the permit of each traveling sales crew worker. The company must also provide notice to the local police department or sheriff's office. In addition, the statute encourages law enforcement to question individuals who engage in door-to-door sales.

The law provides for fines and penalties for any violation.

Employer Action Items

Companies that use traveling sales crews will need to examine whether they have hired independent contractors who fit within the statute and must now be treated as employees and provided with the other benefits of the statute. Companies who continue to employ traveling sales crews in Wisconsin should take the following actions:

- o Review policies for traveling sales teams and ensure compliance with the new law.
- o Obtain necessary certifications from the state.
- o Obtain permits for employees in traveling sales crews.
- o Conduct background checks on employees in traveling sales crews.
- o Create disclosure statements to be distributed to applicants and employees.
- o Ensure that current record retention policies comply with the new law.
- o Contact local law enforcement before sending employees into new areas.
- o Train supervisors on the new law.
- o Make sure that the necessary insurance is in place.

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