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MESSAGE FROM THE CHAIR

The past few months have seen a significant amount of new legislation affecting the workplace. From requiring written commission agreements to mandating leave for blood donations, the legislature has enacted several laws that warrant attention. We encourage you to familiarize yourself with these new developments and look forward to assisting you in complying with these as well as any other employment law matters.

Please feel free to contact me or any member of the Employment Law Group.

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NEW LAW REQUIRES WRITTEN COMMISSION AGREEMENTS

Effective October 16, 2007, a new law went into effect in New York requiring written commission agreements with employees who have commissions as part or all of their compensation arrangements. Failure to comply with the new law's requirements will have a significantly detrimental effect should a dispute over commissions arise.

The new law now presumes that, in the absence of a written agreement, the payment terms as described by the employee are accurate. Therefore, it is critical that employers create written agreements with all commission-based employees to ensure that the terms of the agreement are enforced in a manner consistent with the employer's understanding.

Under the new law, a commission agreement must be in writing and must:

- Be signed by both the employer and employee
- Include a description of how wages, salary, drawing account, commissions and all other monies earned are payable and calculated
- Set forth the frequency of reconciliation where the agreement provides for a recoverable draw
- Contain details of payment in the event of termination by either party
- Be kept on file by the employer for a period of not less than three years

Every employer with commissioned salespeople must take heed – failure to clearly and accurately set forth in writing the precise terms of the employees' commission arrangement will likely result in an adverse determination should an employee file a claim.

Should you need assistance reviewing existing agreements or preparing new ones, please let us know.

Ruskin Moscou Faltischek's Employment Law Capabilities

- Sexual Harassment
- Discrimination
- Restrictive Covenants (non-compete, non-solicitation) and Unfair Competition
- Protection of Trade Secrets, Proprietary Information and Business Opportunities
- Employment At Will, Breach of Contract and Termination for Cause
- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages
- Comprehensive Litigation Services

NEW PENALTIES FOR MEAL PERIOD GUIDELINE VIOLATIONS

Effective January 2008, employers will be subject to penalties for failing to comply with the New York State Meal Period Guidelines. Generally, employers are required to provide all employees a one-half hour meal period when they work at least six hours over the period of 11:00 a.m. to 2:00 p.m. (other provisions apply in other circumstances). Failure to comply with this law now subjects employers to a fine of up to \$1,000 for a first violation, \$2,000 for the second violation and \$3,000 for the third violation.

Accordingly, employers should be sure to require that all employees take their required meal breaks and to have reliable records to establish compliance should a violation be asserted by the Department of Labor.

OTHER DEVELOPMENTS

- **Nursing Mothers in the Workplace Act** – As of August 2007, employers must provide a reasonable amount of unpaid or paid break time each day to allow an employee to express breast milk for her nursing child for up to three years following the child's birth. Reasonable efforts must be made to provide a room or other location in close proximity to the work location so the employee can express in privacy. Discrimination "in any way" against an employee is prohibited.
- **Leave of Absence for Blood Donation** – Effective in December 2007, employers with 20 or more employees must provide employees who work at least 20 hours per week three hours of leave in any 12 month period to donate blood. Employers may not retaliate against an employee for requesting or obtaining such leave.
- **Workers Classified as Independent Contractors** – Gov. Spitzer announced in September 2007 the creation of an interagency task force to step up enforcement against companies that misclassify workers as independent contractors and thereby evade wage and tax laws, e.g., workers' compensation and unemployment insurance premiums, Social Security taxes, etc. Thus, in addition to more aggressively pursuing employers who misclassify employees, now if one agency learns of a misclassification it will share that information with other agencies. Now is the time to consider whether you are properly classifying your workforce.

Employment Law Alert is a publication for distribution without charge to our clients and friends. It is not intended to provide legal advice, which can be given only after consideration of the facts of a specific situation.



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