Court Upholds Chargeback Provision in Employee Sales Commission Contract

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Salespeople often work on a straight commission, or a compensation plan that includes both base pay and commission. Employers often find it useful or necessary to advance commissions to salespeople after a sale is made, but before commissions are fully earned. This practice may be standard within a particular industry, necessary to compete with other employers to attract talent, or as a recognition of cost of living pressures, not to mention good employee relations.

But what happens when commissions that have been advanced are not earned, or sales deals that support such commissions fall apart or get cancelled, denying expected revenue to the employer? May an employer charge back the salesperson/employee for advanced commissions in such situations?

A recent California case, *Deleon v. Verizon Wireless*, Cal.App.4th (7/10/12) sheds light on these questions and is the latest in a string of cases addressing commission chargebacks. The key issue in *Deleon* was whether amounts paid to Verizon retail sales clerks were advances or wages.

Since Verizon clearly communicated to its salespeople that (i) the amounts paid were advances that were not earned until expiration of a chargeback period and (ii) there were conditions precedent for earning such amounts (i.e. no cancellation of the customers service plan), the Court of Appeal held that the advances were not earned wages, and that chargebacks by the employer did not violate the California Labor Code and were not unconscionable.

It's notable that the result in *Deleon* was reached even though Deleon failed to sign the Acknowledgment Form that accompanied Verizon's written compensation Plan. The court nonetheless determined that the terms of the plan were clearly communicated, noting that "[a]t new hire orientation, Verizon Wireless provides a written copy of the applicable compensation plan to its retail sales representatives, reviews it with them, and conducts training on how the compensation plan operates. Each year, Verizon Wireless provides training on the compensation plan effective for that year."

Still, employers should strive to have salespeople sign an acknowledgement form, and each commission plan should clearly spell out the circumstances under which commissions are deemed earned and payable. While effective commission plans can drive profitable growth from a sales team, clearly spelling out and communicating the terms of the agreement is a crucial step in managing potential future risk while bolstering employee moral. http://bit.ly/Pn9vA9

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