Paper is Power: Commission Agreements

By
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Most employers have gone to great lengths to develop Employee Handbooks, Arbitration Agreements and Confidentiality Agreements that protect the employer when an employee is terminated or laid off. Despite most employers' savvy on these 'standard' agreements, employers are often without sufficient commission agreements with their sales staff which can turn into a potential nightmare, especially when the employee leaves the company.

Here are some of the concepts that should be in your commission agreements:

1. Define job duties and when the commission is earned.

   If a sales person must actually collect the money from the customer as part of his job, as opposed to just booking the sale, the employer might be able to reduce the commission owed to the salesperson upon separation if the employer had to take efforts to collect the account. Your plan should also indicate when the commission is "earned" by the employee. Most plans state that commission is not earned until the employer receives payment from the customer.

2. Define the cutoff date for calculating commissions for each pay period.

   If the employee's customer mails a check prior to the Friday "cut off" but the check does not arrive until the following Tuesday is that check included in the previous time period? Most employers opt to pay commissions only on money received by the employer at the close of each pay period but this should be addressed in your commission agreement. This is especially important when the employee's rate of commission is tied to achievement of certain dollar targets within each pay period.

3. Address the impact of returns, refunds or adjustments to a customer.

   Most commission agreements indicate that a return or refund will void an already paid commission and the employer will reduce any future commissions owed to the employee to offset the commission already paid on the sale subject to a return or refund.

4. Regularly reconcile the books.

   Spell out how often the company will reconcile the employee's sales (and commissions owed) with incoming returns or refunds. Most employers try to do this every pay period to avoid a situation where the rate of return of a particular employee's customers quickly outpaces the commissions owed to the employee.

5. What happens when the employee leaves the company?

   Probably the most important issue for any commission agreement is how long the employer will continue to pay commissions to the employee after the employee leaves the company.

   There is a presumption that sales staff are owed commissions for sales that the employee worked on prior to separation but close after the employee no longer works for you. This concept often frustrates employers but as often quoted by local Labor Commissioners, "he who shakes the tree is entitled to gather the fruit." An employee cannot 'forfeit' their commissions upon separation. If you have an agreement that uses the word 'forfeit' or 'forfeiture', it is time to call your attorney to take a second look and make sure your agreement is still viable. In particular, using the word 'forfeit' or 'forfeiture' in a commission agreement is the equivalent of a matador waiving a red flag, with the DLSE being the bull ready to stick its horns in your agreement.

   A good commission agreement will define the length of time an

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employer must pay commissions after separation. Although some DLSE folks will say an employer may not limit the time period for 'tail' commissions, there have been recent cases which upheld commission agreements which limited the length of time an employer paid commissions for sales that came in after the employee's departure from the company.

The courts looked at whether the commission agreements in question were easy to understand, whether they were fair to the employee and whether they made sense in the context of that particular business.

The tail period for commissions should also identify two different lengths of time for an employee who voluntarily quits versus an employee who was fired.

Presumably, the employee who quit controlled their own destiny and could spend the last week or two of employment working on collecting their accounts where the employee who had no notice they were soon to be unemployed, could not protect himself by working on collecting his accounts before he left.

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articulated. And, we have collaborated with local, state and national industry groups and trade associations because there absolutely is strength in numbers.

In the vein of strength in numbers, it is absolutely critical that your elected officials hear from you, their constituents, regarding your opinions and positions about the legislative proposals currently under deliberation and consideration. Our website includes links for identifying contact information for your state and federal elected officials. It's not too late to let your voices be heard.

Employers Group will continue to monitor the current legislative deliberations underway. However, it's important to note that we have already commenced the planning and strategy development process for an employer-focused 2010 legislative agenda. To facilitate our planning efforts, it's critical that we hear from you regarding the operational and workforce challenges that confront your business each and every day. Your input is crucial to shaping and molding EG's legislative advocacy efforts for next year. Please e-mail Employers Group at **advocacy@employersgroup.com**.

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vice-versa with your communication to management. While they aren't heartless drones sitting in windowed offices, they too are juggling many plates and don't need to know the intimate detail of feedback that you have to filter through by your employees.

The speed at which you can communicate messages to both management and staff will help you in the long term. Not only does it make both sides feel important, but it also allows less time for rumors and gossip to grow.

Know your audience and how they are tied in to the message they are receiving. Remember as you customize your communication that people, by nature, have a "what's in it for me" or "WIIFM" mindset. If it's one person, a team, an entire department, or the entire company – what you say, matters. When communicating with larger groups, you must keep your message basic and easy to understand. From there, you can break down what that message means group-by-group, detailing the "WIIFM" as needed.

The more honest we are with both management and staff will lead to greater communication among all. While you may not be the President & CEO of your firm, you can influence how they present themselves to staff by being that channel of communication for them. You can be that figurehead from the executive's office, leading others by your exemplary communication skills.

Adopt open and honest communication as your mantra and turn it into a company-wide best practice. It will take time, but the benefits are enormous for your role in the company.

So next time you're walking down the hall, if your employees are still jumping out of the way, you might want to buy some gum.