



Electronic Dispatch

# Labor and Employment Law Information Memo

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## AMENDMENT TO NEW YORK LABOR LAW REQUIRES WRITTEN COMPENSATION AGREEMENTS WITH COMMISSIONED SALESPERSONS

Effective October 16, 2007, employers that employ commissioned salespersons in New York State must enter into written agreements regarding the compensation structure for those salespersons. This new requirement is set forth in an amendment to Section 191(c) of the New York Labor Law.

Under Section 191(c) of the New York Labor Law, the required written agreement with a commissioned salesperson must include a description of how wages, salary, drawing account, commissions, and all other monies earned will be calculated. If the written agreement provides for a recoverable draw, the frequency of reconciliation must also be included. The agreement must also provide details regarding payment of wages, salary, drawing account, commissions, and all other monies earned if the employment relationship is terminated by either party.

The new law only requires a written agreement regarding compensation. The written agreement need not contain any other provisions, and does not change the status of commissioned salespersons who are employed at-will. It would be advisable, however, to specifically include a provision in the written agreement confirming the employee's at-will status.

The written agreement must be signed by both the employer and the commissioned salesperson. A written policy promulgated by an employer regarding the compensation structure for commissioned salespersons, that is not signed by those salespersons, is not sufficient to comply with this new requirement.

Employers are required to maintain the written agreements with commissioned salespersons for at least three years, and must make those written agreements available to the New York State Department of Labor (NYSDOL) upon request. Despite the statutory requirement that employers maintain the written agreements for a minimum of three years, employers would be well-advised to maintain the written agreements for at least six years, as this is the statute of limitations for common law breach of contract claims in New York, as well as wage claims under the New York Labor Law.

If an employer fails to produce a signed written agreement with a commissioned salesperson upon the request of the NYSDOL, the NYSDOL will presume that the terms of employment that the commissioned salesperson has presented are the agreed-upon terms of employment.

If you have any questions about this new requirement, or need assistance in complying with this new requirement, please contact:

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