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MICHIGAN SALES REPRESENTATIVE ACT AND YOUR COMMISSION AGREEMENTS

Introduction

Many organizations enter into commission agreements with sales representatives in the ordinary course of business. However, many are unaware that commission agreements have the potential for serious problems if they are not drafted and executed in a manner that is consistent with Michigan law.

The Michigan Sales Representative Act, codified as Michigan Compiled Laws 600.2961, sets forth very specific requirements pertaining to the payment of sales commissions falling due upon or after termination of a sales contract.

Organizations utilizing sales representative as defined by the Act need to be aware that *heavy penalties*, including treble damages, may be recovered for failure to pay commissions due upon termination of the agreement as provided for by the Act.

The purpose of this Special Report is to identify some of the issues associated with the proper payment of sales commissions upon termination of a sales contract, and to discuss some methods of protecting your organization from being held liable for failure to comply with the act.

The Michigan Sales Representative

The Michigan Sales Representative Act applies to individuals and legal entities (called "principals" under the act) that: and state.

- a) Manufacture, produce, import, sell or distribute a product in the State of Michigan;
- b) Contract with a sales representative to solicit orders for, or sell, a product in the

Under the Act, a "*sales representative*" means a person who contracts with or is employed by a principal and is paid, in whole or in part, by commission.

The statute, in short, provides that all commissions that are due at the time of termination of the contract, or which fall due after the date of termination, must *be paid within 45 days of the date they become due*.

Mailing Address: P.O. Box 511077 Livonia, Michigan 48151-7077

Cambridge Plaza Building: 15415 Middlebelt Road, Livonia, Michigan 48154-3805 T: 734.525.0927 F: 734.525.0612 www.cambridge-pc.com

A principal who fails to pay commissions owed in the manner specified by the Act is liable to the sales representative for actual damages caused by the failure to pay the commissions when due.

If the principal is found to have intentionally failed to pay the commission when due, the Act provides that the principal is liable for actual damages plus two times the commissions owed up to \$100,000.00, plus attorney fees and court costs.

Risk Management Techniques

If your organization falls under the Michigan Sales Representative Act, you need to develop appropriate risk management techniques to help protect you from claims for damages under the Act.

Review your commissions agreement with legal counsel or risk management professional.

Your agreement with the sales representative should be very specific as to when a commission is earned. One of the most important things to do is to try to cover all the contingencies with regard to commission payments upon or after separation.

For instance, if a salesperson is only partially involved, does that person receive full commission? If the job is not fully paid for and a bad debt is created, is that deductible from the commission? How would such a situation affect the commission owed? If the salesperson proposes the job and then quits or is fired and you get the job six months later with the involvement of other people, is the full commission still paid? These are only a few examples of possibilities which should be considered.

Conclusion

Most organizations cannot afford to be non-compliant with the requirements of the Michigan Sales Representatives Act, as penalties for non-compliance are steep.

Any claims made under this statute for damages are not covered by insurance.

The development of appropriate risk management techniques depends on the specific needs of your organization and should be addressed through consultation with legal counsel.