The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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A Refresher on Commission Laws in Minnesota

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As we enter the new year, this period often coincides with commission payouts, a natural inflection point when sales professionals reassess their roles and, in many cases, transition to new opportunities. As a result, employers must carefully navigate departures, compensation obligations, and post-employment issues to minimize disruption and reduce exposure to legal and business risk.

"Employee" or "Independent Contractor" Status Determines Payment Timings

As a threshold matter, employers must first determine whether the salesperson is properly classified as an employee or an independent contractor under Minnesota law. That analysis turns primarily on the common-law "right to control" test, which looks at factors such as who controls the manner and means of the work, how the individual is paid, and whether the work is integral to the business.

If your salesperson is an "employee," employers are required to pay in full wages and commissions earned not later than the first regularly scheduled payday following the employee's final day of employment. Minn. Stat. § 181.14, subd. 1. If the employee is discharged, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee. Minn. Stat. § 181.13(a). The wages and commissions must be paid in the usual manner of payment, such as direct deposit or check.

However, many sales roles are classified as independent contractors. Minnesota law defines "commission salesperson" as one who is paid on the basis of commissions for sales who is an independent contractor. Whether the commissioned salesperson is terminated or resigns, the employer shall promptly pay the salesperson, at the usual place of payment, commissions earned through the last day of employment. Minn. Stat. § 181.145, subd. 2(a).

If the employer terminates the salesperson or if the salesperson resigns giving at least five days' written notice, the employer shall pay the salesperson's commissions earned through the last day of employment on demand no later than three working days after the salesperson's last day of work.

On the other hand, if the salesperson resigns without giving at least five days' written notice, the employer shall pay the salesperson's commissions earned through the last day of employment on demand no later than six working days after the salesperson's last day of work.

When there is a dispute concerning the amount of the salesperson's commissions earned through the last day of employment or whether the employer has properly audited and adjusted the salesperson's account, the employer can avoid penalties if the employer pays the amount it, in good faith, believes is owed to the salesperson for commissions earned through the last day of employment.

If the dispute is later adjudicated and it is determined that the salesperson's commissions earned through the last day of employment were greater than the amount paid by the employer, the employer may be subject to a penalty plus reasonable attorneys' fees incurred by the salesperson.

If the employer fails to pay the salesperson commissions earned through the last day of employment on demand within the previously discussed period, the employer shall be liable to the salesperson, in addition to earned commissions owed, for a penalty for each day. The daily penalty is an amount equal to 1/15 of the salesperson's commissions earned through the last day of employment which are still unpaid at the time that the penalty will be assessed, capped at 15 days. For high income commissions, this could amount to a stiff penalty—essentially the employer would owe the sales person double the commissions earned if the matter is not resolved within the 15-day period.

Written Policies Are Essential For Employers

Employers should maintain clear written policies addressing the treatment of departing salespeople. These policies should expressly define when commissions are considered "earned," the timing and conditions under which commissions are paid following separation, and how chargebacks, draws, or uncollected accounts are handled.

In addition, employers should outline expectations and obligations that survive termination, including the enforcement of non-solicitation, confidentiality, and proprietary-information agreements. Well-drafted, consistently applied policies not only reduce confusion and disputes at the point of departure, but also place employers in a stronger position to enforce post-employment restrictions and defend against commission-related claims.

The Bassford Remele Employment Law Group is here to support employers in navigating the complexities of employee departures. From addressing sensitive terminations to ensuring compliance with severance agreements, non-compete clauses, and exit protocols, Bassford's experienced team helps employers handle transitions smoothly and minimize legal risks. Please reach out with any questions.

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