STATE OF NEW YORK

1053

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. M. G. MILLER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring an additional disclosure when a person shall be compensated exclusively by commissions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 6 of section 190 of the labor law, as added by chapter 548 of the laws of 1966, is amended to read as follows:

6. "Commission [~~salesman~~] **salesperson**" means any employee whose principal activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or any article or thing and whose earnings are based in whole or in part on commissions. The term "commission [~~salesman~~] **salesperson**" does not include an employee whose principal activity is of a supervisory, managerial, executive or administrative nature.

§ 2. Paragraph c of subdivision 1 of section 191 of the labor law, as amended by chapter 304 of the laws of 2007, is amended to read as follows:

c. Commission salespersons.--**(i)** A commission salesperson shall be paid the wages, salary, drawing account, commissions and all other monies earned or payable in accordance with the agreed terms of employment, but not less frequently than once in each month and not later than the last day of the month following the month in which they are earned; provided, however, that if monthly or more frequent payment of wages, salary, drawing accounts or commissions are substantial, then additional compensation earned, including but not limited to extra or incentive earnings, bonuses and special payments, may be paid less frequently than once in each month, but in no event later than the time provided in the employment agreement or compensation plan. The employer shall furnish a commission salesperson, upon written request, a statement of earnings

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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paid or due and unpaid. The agreed terms of employment shall be reduced to writing, signed by both the employer and the commission salesperson, kept on file by the employer for a period not less than three years and made available to the commissioner upon request. Such writing shall include a description of how wages, salary, drawing account, commissions and all other monies earned and payable shall be calculated. Where the writing provides for a recoverable draw, the frequency of reconciliation shall be included. Such writing shall also provide details pertinent to payment of wages, salary, drawing account, commissions and all other monies earned and payable in the case of termination of employment by either party. The failure of an employer to produce such written terms of employment, upon request of the commissioner, shall give rise to a presumption that the terms of employment that the commissioned salesperson has presented are the agreed terms of employment.

(ii) Where a commission salesperson shall be paid exclusively in commissions as part of the written terms of employment as required in subparagraph (i) of this paragraph, the employer shall also include an additional document to be signed by both such employer and such commission salesperson. The department shall promulgate such document which shall be titled "Commission Only Compensation Disclosure" and shall include in not less than fourteen point bold type: (A) a clear statement that such commission salesperson shall receive monetary compensation from commissions only and shall not receive a salary or hourly wage; and (B) a statement that by signing such document, the commission salesperson understands and agrees to such compensation structure.

§ 3. Subdivision 1 of section 191-b of the labor law, as added by chapter 451 of the laws of 1987, is amended to read as follows:

1. When a principal contracts with a sales representative to solicit wholesale orders within this state, the contract shall be in writing and shall set forth the method by which the commission is to be computed and paid. **Where a sales representative shall be paid exclusively in commissions as part of the required contract the principal shall include an additional document to be signed by both such principal and such sales representative. The department shall promulgate such document which shall be titled "Commission Only Compensation Disclosure" and shall include in not less than fourteen point bold type: (A) a clear statement that such sales representative shall receive monetary compensation from commissions only and shall not receive a salary or hourly wage; and (B) a statement that by signing such document, the sales representative understands and agrees to such compensation structure.**

§ 4. This act shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.