

VB Client Advisory

Effective January 1, 2013, Commission Arrangements Require a Written Agreement

Effective January 1, 2013, under the amended Section 2751 of the California Labor Code, whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract must be in writing and must set forth the method by which the commissions are computed and paid. It should also be noted that an employer is required to provide the employee with a signed copy of the contract and must obtain a written acknowledgment from the employee confirming that a copy of the agreement was received (a signed receipt will suffice).

Section 204.1 of the California Labor Code defines “commissions” as “...compensation paid to any person for services rendered in the sale of such employer’s property or services and based proportionately upon the amount of value thereof.” Expressly excluded from the definition of “commissions” are short-term productivity bonuses and profit-sharing plans (unless the same are offered as compensation by the employer as a fixed percentage of sales or profits for work performed).

Varnier & Brandt stands prepared to draft or update your commission-based employment agreements, as well as provide counsel with respect to commission-related matters such as: (1) how frequently commissions must be paid, (2) when commissions must be paid upon an employee’s termination from employment, and (3) in the event that products are returned or service is canceled after a commission has been paid for the sale of the same, whether or not such previously paid commissions can be deducted from an employee’s future commissions. Feel free to contact us to discuss these or other employment issues.

About Varnier & Brandt LLP

With legal roots in the Inland Southern California community since 1873, Varnier & Brandt utilizes the deep relationships developed in the communities they serve to anticipate the needs and opportunities of their clients in matters complex and routine. Varnier & Brandt has succeeded by offering more than legal counsel through the formation of unique and consultative relationships with their clients. Whether you need counsel on business finance, mergers and acquisitions, business transactions and strategy, real estate development, labor, estate planning or litigation, with Varnier & Brandt’s vast experience and connections, they help you identify all potential options and develop cutting edge solutions tailored to your individual needs. Visit Varnier & Brandt online at www.varnierbrandt.com or contact us at (951)274-7777.

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