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California Now Requires Written Commission Agreements

Effective January 1, 2013, California joins a handful of other states, including New York, that require employers to memorialize in writing commission agreements with employees.

Writing Requirement. Effective January 1, 2013, California will require all employers with employees providing services in California to memorialize any commission arrangement for those employees in a written agreement. The written agreement must, at a minimum:

- Be in writing and signed by both parties;
- Set forth the method by which commissions are computed and paid; and
- Be given to the employee (evidenced by a signed receipt).

Scope of Commissions. The scope of commissions covered by the new law includes wages paid for services rendered in the sale of property or services. Under the statute, commissions subject to the new law will not include:

- Short-term productivity bonuses;
- Temporary, variable incentive payments that increase, but do not decrease, payment under the written contract; or
- Bonus and profit-sharing plans (unless they involve a fixed percentage of sales or profits).

Automatic Renewal. The new law also imposes an automatic renewal of the commission structure and payment obligations upon the expiration of any written commission agreement. Specifically, starting January 1, California will continue to enforce the terms of a commission agreement until it is superseded by a new agreement or terminated by the employer or employee.

Next Steps. Employers will need to memorialize their commission agreements or arrangements in California in writing prior to January 1, 2013. Even employers who have commission-based employees in other states should still consider preparing written commission agreements as a matter of prudence. Beyond setting forth the method by which commissions are computed and paid (as now specifically required in California), employers should consider including terms governing the method and

timing of payment, arbitration in the event of a disagreement, and payout upon termination.

Contact Information. For more information on how to comply with California's new writing requirement for commission agreements, please contact Doug Towns (404.888.8852) or Jessica Gallegos (404.888.8849).

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