

## **COMMISSION PAY STRUCTURES**

Many employers choose to set up commission pay structures for the purpose of remunerating their employees. Paying by commission is a perfectly valid method of remuneration but, often, employers don't adequately define the commission pay structure.

Especially at the time of termination of employment, a poorly defined commission pay structure is ripe territory for civil and statutory claims by the departing employee. I suggest you consider (at least) the following topics when implementing a commission pay structure.

### **Calculation of Commissions**

- Is the commission structure carved in stone, or do you want to have the ability to review and modify it periodically to reflect your changing business needs?
- What percentage(s) commissions are you planning to pay?
- On what figure will the commission percentage be calculated? "Net" sales? "Gross" sales?
- How is the figure above calculated? Do you have a precise formula by which you can arrive at, for instance, "Net" sales? Is it gross sales, not including taxes, less overhead costs? Or something else? This is the most critical aspect of a commission sales structure and is something that should be discussed with your business accountant.
- Are there any exceptions to the payment of commissions – for example, some businesses exclude certain clients or repeat business by an existing client.
- Will the employee be paid a draw towards future commissions?
- If the employee will be paid a draw, at what intervals (monthly? quarterly?) will the draw and actual commissions earned be reconciled?
- If the employee is in a deficit position at one of the defined reconciliation intervals, how do you intend to handle that situation?

### **When Do Commissions Become Payable?**

- At what point in time are commissions earned by the employee and thus payable? When an order for products or services is received? When the products/services are delivered? When the customer has paid?
- Will earned commissions be reduced or clawed back in the event a sale falls through or is never paid by the customer (a bad debt situation)?
- Is there a maximum amount of commissions payable to the employee which applies in any particular time period?

- Is there a sales/productivity minimum below which commissions will not be payable in a particular time period?
- Is the payment of commissions dependent upon company profitability or overall financial results?
- Is there a minimum amount of sales/commissions the employee is expected to generate in any particular time period?
- Will the employee be paid a commission in respect sales/services made outside of the Employee's defined sales territory?
- Similarly, will the employee's commissions be reduced/shared to reflect the contribution of other persons?

### **Cessation of the Employment Relationship**

At the time of cessation of the employment relationship (for any reason)...

- What will be the cutoff for commissions which are payable or not payable? For instance, in some businesses, accrued commissions payable will be based on sales which have been shipped and invoiced prior to the end of the employee's final day of work (active performance of employment duties), but no commissions will be paid on other in-progress (but not shipped and invoiced) sales.
- If the final reconciliation of the employee's commissions results in a deficit (meaning that the employee has effectively been overpaid), will the employee be expected to repay the deficit to the Employer?

---

*This item is provided for general information purposes only and is not intended to be relied upon as legal advice. Informed legal advice should always be obtained about your specific circumstances.*

**Smithson**  
Employment Law Corporation

306-1500 Hardy Street, Kelowna, B.C. V1Y 8H2 | Phone: 778-478-0150 | Fax: 778-478-0155  
www.smithsonlaw.ca