

## CLIENT ALERT

### Commissioned Salespersons in New York State Must, Effective October 16, 2007, Be Paid Under Written Agreements

**Oct.12.2007**

An important amendment to Section 191.1(c) of the New York Labor Law, relating to the payment of commissioned salespersons in New York State, becomes effective October 16, 2007. Section 191.1(c) requires the payment of such commissioned salespersons not less frequently than once per month. When the amendment takes effect, the agreed terms of employment of a commissioned salesperson in New York State, including a description of “how wages, salary, drawing account, commissions and all other monies earned and payable shall be calculated,” must be reduced to writing. Such writing must be signed by both the employer and the employee. The written agreement must also provide pertinent details in relation to the frequency of reconciliation in connection with recoverable draws and the amounts payable upon termination of employment.

The signed terms of employment must be retained by the employer for at least three years and made available to the New York State Commissioner of Labor upon request. The statute as amended now provides that the failure of an employer to produce the signed terms of employment, upon request of the Commissioner, shall result in the presumption that the terms of employment as presented by the commissioned salesperson constitute the agreed terms of employment.

All employers who employ personnel in New York State who are paid on a commission basis must comply with this requirement by October 16, 2007. Wages and terms of conditions must be reduced to writing. In light of the significant risk associated with the adverse presumption described above, an employee who refuses to execute the appropriate documents cannot be permitted to continue employment.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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