

3 questions to consider before terminating a sales representative



James J. Giszczak, Timothy J. Lowe | Tuesday, December 15, 2015

One of the most critical points in a company's relationship with a commissioned sales representative is the termination of that relationship. Often a sales representative agreement provides for termination, but is silent about the commission payments owed, if any, after termination. In many cases, the company simply stops paying commission after termination, which inevitably leads to expensive and time consuming litigation. Careful drafting before entering into the relationship is the best way to avoid disputes later on and provides certainty when the relationship ends.'

It is important to answer the following three questions early on to avoid pitfalls down the road:

1. Do we need to pay the representative on commission?

Sales representatives are traditionally paid with a commission based on sales made. There are advantages to this type of relationship, including that the representative is motivated to make as many sales as possible to increase income. But there are alternatives to commissioned sales representative relationships, including flat fees rather than commissions. These types of arrangements provide certainty to the company in the future, and may be crafted to incentivize the representative.

2. When can we terminate the representative?

Termination options are critical to the company, but often representatives propose long term contracts that do not provide for termination. It is imperative for the company to have flexibility to terminate a representative's contract at any time with reasonable notice. It is possible the representative will remain engaged long term; however, if performance or financial considerations necessitate termination, it is key that the company have the flexibility to terminate.

3 questions to consider before terminating a sales representative

3. What will the representative be owed after termination?

Once the contract is terminated, the representative will be eager to know whether any post-termination payments will be forthcoming for their work. If the contract is silent, a representative paid on commission may have a claim to continuing commissions on sales for which the representative can prove it was the procuring cause, and reorders on previously concluded sales. Therefore, it is critical that if a representative is paid on commission, the agreement makes clear what, if any, commission the representative is owed upon termination.

All of these issues can be addressed before the sales representative is engaged. If your company has current representative agreements, be sure to have them reviewed before taking action to terminate the agreement to confirm your understanding of the company's exposure.

For more information, please contact one of the attorneys listed below.



James J. Giszczak



Timothy J. Lowe