

**NEW YORK REQUIRES WRITTEN AGREEMENTS FOR
COMMISSION SALESPEOPLE**

In an effort to combat difficulties in investigating wage payment claims, New York has adopted a new law that requires employers to have written terms of employment for commission salespeople. Failure to comply with the new law will subject an employer to an adverse presumption in any wage payment claim in favor of the employee’s recitation of the terms of his or her commission arrangement.

The new law requires that (1) both the employer and the employee sign a written employee commission agreement, (2) the employer retain the agreement for at least three years and make it available to the New York State Department of Labor upon request, (3) the written agreement include a description of how wages, salary, drawing accounts, commissions and all other compensation will be calculated and paid, (4) the agreement state the frequency of reconciliation if it provides for a recoverable draw, and (5) the agreement delineate how wages, salary, drawing accounts, commissions and all other compensation are to be paid in the event the employee is terminated or resigns.

A “commission salesperson” means any employee whose principal activity is the selling of any goods, merchandise, real estate, securities, insurance or any other article or thing and whose earnings are based in whole or in part on commissions. It does not include an employee whose principal activities are supervisory, managerial, executive or administrative in nature.

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If you have any questions regarding this memorandum, please contact Frank A. Daniele (212-728-8216, fdaniele@willkie.com) or the attorney with whom you regularly work.

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