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California Court Holds That Employer May Charge Back Advanced Commissions When Agreed Upon Conditions Are Not Fulfilled

In *Steinhebel v. Los Angeles Times Communications*, a California Court of Appeal recently held that an employer may legally charge back advanced commissions in the event agreed upon conditions are not satisfied.

In this case, the plaintiffs, former telesales employees for the Los Angeles Times, entered into a *written agreement* controlling the payment of the employees' commissions. The employees earned an hourly base pay at the statutory minimum wage and earned commissions from the sale of newspaper subscriptions. The written agreement provided in part that although commissions on subscription sales were advanced to the employees, the commissions on the sales were subject to a chargeback against future commissions in the event the customer did not keep the subscription for at least twenty-eight (28) days.

The employees filed a complaint seeking relief under various California Labor Code provisions including: Section 203 (waiting time penalties); Section 221 (collection or receipt of wages previously paid); Section 225 (unlawful receipt or withholding of wages and secret payment of wage below scale); Sections 400 through 410 (restrictions on employee bonds); and Business and Professions Code Section 17200 (unfair competition).

The Court affirmed that an employer may legally advance commissions to its employees prior to the completion of all conditions for payment and, by agreement, charge back any excess advance over the commissions earned against any future advance should the conditions not be satisfied. The Court determined that the twenty-eight (28) day requirement was a condition precedent to the employees' entitlement to the commission. Accordingly, the advances did not constitute earned wages because all the conditions for performance had not been satisfied. The chargeback procedure merely reconciled unearned commissions by reducing the amount of the next advance to the employee. The Court also took into account the fact that the employees always received their full hourly statutory minimum wage regardless of the net level of sales during a particular period, and the employees expressly authorized the chargeback of commissions pursuant to written agreements.

Employers should consult with their labor counsel when implementing a policy to charge back advanced commissions to sales employees.

For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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