

## Resolution 04-01-2009

### Written Commission Agreements

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend California Labor Code Section 2751 to read as follows:

- 1 § 2751  
2 Whenever any employer ~~who has no permanent and fixed place of business in this~~  
3 ~~State~~ enters into a contract of employment with an employee for services to be rendered  
4 within this State and the contemplated method of payment of the employee involves  
5 commissions, the contract shall be in writing and shall set forth the method by which the  
6 commissions shall be computed and paid.  
7 The employer shall give a signed copy of each such contract to every employee who  
8 is a party thereto and shall obtain a signed receipt for the contract from each employee.  
9 As used in this section, "commissions" does not include short term productivity  
10 bonuses such as are paid to retail clerks; and it does not include bonus and profit-sharing  
11 plans, unless there has been an offer by the employer to pay a fixed percentage of sales or  
12 profits as compensation for work to be performed.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Beverly Hills Bar Association

### **STATEMENT OF REASONS:**

Existing Law: The existing law is unconstitutional pursuant to decisional law.

This Resolution: This resolution amends California Labor Code section 2751 to eliminate provisions held unconstitutional by the United States District Court, Northern District of California, in *Lett v. Paymentech, Inc.*, (N.D. Cal. 1999) 81 F.Supp.2d 992 on Commerce Clause and Equal Protection grounds.

The Problem: Although the statute remains on the books, it is practically unenforceable due to the holding in *Lett*. The statute purports to require “any employer who has no permanent and fixed place of business in this State [and who] enters into a contract of employment with an employee for services to be rendered within this State [,which contract]. . . contemplate[s]. . . payment of the employee involve[ing] commissions” to reduce that contract to writing setting forth “the method by which the commissions shall be computed and paid.”

The statute contains additional provisions requiring the employer to provide each affected employee with a signed copy of the contract and obtain from each such employee a signed receipt for the contract, and defining “commissions” as excluding “short term productivity bonuses such as are paid to retail clerks; and it does not include bonus and profit-sharing plans, unless there has been an offer by the employer to pay a fixed percentage of sales or profits as

compensation for work to be performed.” This amendment would have no effect on those provisions.

### **IMPACT STATEMENT**

This resolution would also make effective Labor Code Section 2752, which provides that “[a]ny employer who does not employ an employee pursuant to a written contract as required by Section 2751 shall be liable to the employee in a civil action for triple damages.”

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