

Each month, Steven Mitchell Sack, Esq., special counsel to the Bureau, offers suggestions and advice on legal issues facing sales representatives today.

Steps To Take When You Are Fired-Part Two

BY STEVEN MITCHELL SACK, ESQ., Bureau Special Counsel

In the last issue, Sack outlined post termination options available to you. Now, he puts forth some solid strategies you can use if you are unexpectedly fired. Among them:

1. What does your contract say? If you signed a written contract, re-read it. Review what it says about termination procedures. For example, can you be fired at any time without cause or must the principal send you written notice before the effective termination date? Look to see if notice of termination is required. Remember that the failure to send you timely notice, or no notice at all, may place the company in breach of contract if notification is required

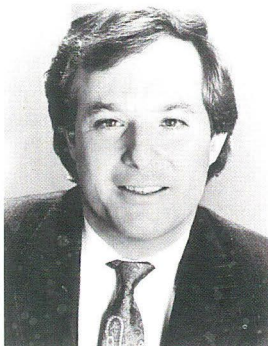
2. Were oral promises of job security ever given? If promises were made during the hiring interview, remember and document what was said, when, where, who said it, and the names of any witnesses who were present whenever such promises were made. This may help your case at a later date.

3. Do your personnel records support the firing decision? Some states permit reps and employees to review and copy the contents of their personnel files. Sometimes, these files do not support firing decisions because they contain favorable performance appraisals, recommendations, memos and sales figures. This may apply to reps. Other times you can learn that the reasons given for your termination are incorrect and/or legally insufficient.

4. Do you feel the firing was a result of discrimination? Companies must apply the same standards to all reps regardless of race, age, sex or disability.

5. Did you rely on a promise before the hiring only to be fired immediately thereafter? What if you resign from repping a current line because you're offered a position with a new principal but are terminated before you begin work? What happens if you are fired immediately after starting the job? If this occurs, you may be protected by a legal principle called promissory estoppel. Even if you cannot contest the firing itself, you may be entitled to additional damages flowing from the firing, as well as other monies currently due.

6. Know the law in your state with respect to the prompt payment of earned commissions. Sales reps throughout the U.S. now have additional ammunition to ensure the prompt collection of commissions. This is because 35 states have enacted legislation within the past



few years requiring prompt payment of commissions (within days) to reps who resign or are fired and providing damages up to three times the commission amount owed plus reasonable attorney fees, costs and disbursements when reps resort to litigation in the event of a principal's noncompliance. Many of these state laws also require the parties to have written agreements specifying how commissions are earned and when they are due.

7. Consider other arguments supporting additional post termination commissions and severance pay. One of the most significant, yet often overlooked areas of principal-rep dealings involves the treatment of offers and commissions after the rep resigns or is fired.

Also, an additional source of post termination compensation frequently overlooked in the negotiation process includes severance compensation. The first thing to remember is that reps should distinguish their rights during the notice period and after the working relationship has ended. There is a difference. During the notice period, reps should continue to solicit orders and receive payment of commissions for sales (and shipments) made before the termination date. Post termination commissions are another matter and should be discussed and agreed to in writing before the rep begins selling. Correspondingly, the right to collect such payments also includes the right to receive timely copies of all invoices for post termination shipments, proper accounting and accurate commission statements plus the right to personally inspect the company's books and records to verify all shipments and payments received from customers. Even if you failed to negotiate and include these items in a written agreement, there is a strong possibility that you can obtain such payments, particularly if you are fired suddenly and have worked a lengthy period for the principal.

8. Insist on receiving a final statement of commissions and other benefits to determine if you are owed any money. This demand can be made orally to the principal but if no adequate response is received, it should then be made in writing, sent certified mail, return receipt requested. The letter will demonstrate your position to a judge, jury or arbitrator and confirm that you did not merely sit back on your rights. This is important because if the case is tried years later, the letter may be used as evidence to demonstrate that you never waived your rights to monies.

Editor's Note **THIS ARTICLE INCLUDES EXCERPTS FROM STEVEN MITCHELL SACK'S BOOK, "SALES REP STRATEGIES FOR DEALING WITH PRINCIPALS SUCCESSFULLY." THIS BOOK IS AVAILABLE TO ALL BUREAU MEMBERS AT A SUBSTANTIAL DISCOUNT. IN ADDITION, MR. SACK CAN ALSO PROVIDE FREE SERVICES TO MEMBERS WITH INDUSTRY-RELATED LEGAL PROBLEMS. CALL MIKE BLACKMAN FOR MORE DETAILS - 1-800-877-1808, EXT. 105.**