



Steps To Take When You Are Fired, Part II

By Steven Mitchell Sack

Here are some solid strategies you can use if you are unexpectedly fired.

1. What does your contract say? Can you be fired at any time, or must the principal send you written notice before the effective termination date? Failure to send you timely notice 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 and where it was said, who said it and the names of any witnesses who were present whenever such promises were made.

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. Other times, you can learn that the reasons given for your termination are incorrect and/or legally insufficient. Also remember that companies must apply the same standards to all reps, regardless of race, age, sex or disability.

4. Did you rely on a promise before the hiring? What if you resign from repping a line because you're offered a position with a new principal but are terminated before you begin work, or immediately after you started the job? 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.

5. Know the law in your state with respect to the prompt payment of earned commissions. Sales reps now have additional ammunition to ensure the prompt collection of commissions — 35 U.S. states require prompt payment (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 have to resort to litigation. Many states also require written agreements specifying how commissions are earned and when they are due.

6. Consider other arguments supporting additional post-termination commissions and severance pay. Reps should distinguish their rights during the notice period and after the working relationship has ended. 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 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 include these items in a written agreement, you may still be able to obtain such payments, particularly if you are fired suddenly and have worked a lengthy period for the principal.

7. 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, but if no adequate response is received, it should then be made in writing, sent by certified mail, return receipt requested. The letter will demonstrate that you did not merely sit back on your rights. If the case is tried years later, that letter may be used as evidence to demonstrate that you never waived your rights to monies.

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