Structuring Sales Employment Contracts and Commissions

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Problems developing, managing and compensating a print sales force can be minimized, with a properly structured employment agreement. This article addresses several of the most common problem areas—but it cannot cover all the issues applicable to each printing company.

The Interview and Hiring Process. Before beginning a search for a new salesperson, your management team should develop a set of critical requirements/attributes and corresponding questions. Rank them in order of priority, based on whether they are essential, helpful, or neutral. Then develop a list of negative factors.

Use the critical questions/requirements and negative factors you developed to go beyond the "standard" interview process. Have your management staff participate in the interview. Arrange for key staff members in the technical and production areas to talk with the prospective employee. These are the folks that will have to work with this salesperson, and if they generally agree he/she is the wrong person for the job, maybe they are right.

Do not take the resume at face value. Drafting a resume is an art form, and many people are hired based on a resume that was exaggerated or inaccurate. Contact the references listed on the resume, ***and others*** at the company or agency where the employee was previously or is currently working (since no one is going to list a reference that will give a negative report.) Written requests for information or recommendation forms that some companies use are not satisfactory, because few people will give you the same information in writing that they would give you over the phone.

When talking to current or prior employers, keep in mind that there may have been an agreement to provide good references when the employee was asked to resign. Or the current employer may be so anxious to get rid of the employee that they will provide only positive information, and leave out all of the negative factors. In addition to checking out employers, ask for several customer contacts and interview them by telephone.

When looking at the salesperson's volume with their prior or current employer, do not be impressed until you determine whether that salesperson acquired the volume, or whether they were simply assigned to handle it.

In short, get all the information you can *before* making a job offer or commitment. Remember that hiring the wrong individual may end up costing a lot more than just lost sales revenues; it can also have a real dollar cost in loss of image, lost opportunities, and maybe contract buyouts and legal fees if a termination is necessary.

Structuring the Contract. While the average new or lower level salesperson may simply be satisfied with a verbal "at will" employment arrangement, experienced or desirable sales persons usually demand a written employment contract. Prior to looking for job applicants is the best time to get out your existing employment contract, and review it with your attorney. Review the contract to make sure it has all of the provisions your company requires or desires, keeping in mind that it does have to offer the salesperson a reasonable deal, if you expect to get top-notch staff. However, what it should not provide (as all too many do) is a golden deal for the salesperson and a nightmare for the company who makes the wrong hire, or needs to terminate the arrangement for other reasons.

Here are some provisions that should be considered when reviewing your salesperson's employment contract.

1.) Compensation Plan. Although there are a variety of ways in which to compensate a salesperson, one that provides a margin of safety for the employer uses a fixed decreasing salary, plus a commission calculated on contribution – not gross sales or profit.

    Paying commission on gross sales can be a problem. Here is a true story. A major printer arranged a generous compensation plan, under which the sales staff would be compensated with a base salary plus a commission on gross sales to the targeted market. After a quarter of high sales, plants began to report that losses on these jobs were so great that they could not even justify them as "contribution" jobs to fill open time. A check of the competitive pricing revealed that the sales staff, which was given the authority to discount list price by up to 15%, was leaving 10%-15% on the table for most jobs it won.

    Paying a commission on net profit can take away any incentive for the salesperson to bring in a low or no profit $100,000 job that will absorb $40,000 worth of fixed costs and overhead, which would otherwise be red ink at the end of the month or quarter.

    More and more plants are finding customers (often government or non-profits) to whom they can quietly provide discount pricing in order to fill an opening in the schedule. Plant managers realize that the loss in fixed labor cost, overhead, etc. created by several days of open time takes weeks or months to make up. As a result, it is good to encourage sales staff to acquire "contribution" work that may make minimal or no profit—when you need the volume to prevent losses due to low equipment utilization. By paying a commission on contribution, the sales staff is compensated for acquiring that work, but at a lower level than they receive for the type of profitable work you want them to obtain most of the time.

    "Contribution" should be carefully defined in the employment agreement to be the difference between the sale price and the cost of material, outside contracts, and production labor. Although the definition seems fairly simple, calculations and implementations to arrive at the correct percentage and formula can be take some time. But it is worth the effort.

2.) Target sales goals and minimum sales requirements. Before the employment commitment is made, the employer should work with the prospective employee to set target sales goals and minimum sales requirements that the employee finds achievable and acceptable. Those should be included in the employment agreement. If you opt for a declining base salary, the agreement can include a schedule reducing the salary over time, as the agreed-upon sales targets more than make up for the reduction in base salary.

3.) Contract Term and Termination Provisions. When the employer is hiring the salesperson from another company, he may demand a fixed term of employment, during which time the employer cannot terminate the salesperson. Without such a provision, the salesperson is generally an "at-will" employee, subject to termination for any reason. Obviously, these fixed term contracts are one-sided to the benefit of the employee. But you may find a fixed employment term necessary to get the salesperson you want.

The employer will want to temper any employment contract, including those with a fixed term of employment, with two clauses: one allowing termination for "just cause"; and another allowing termination if the employee fails to meet the minimum sales requirements he and the employer agreed to in the contract by a certain time (six months, for example). One advantage of this latter provision is that it makes the employee come up with a reasonable minimum sales per month or quarter at the time the contract is being negotiated. He/she is not going to promise $200,000 per month in new sales as a minimum requirement if he/she knows that probably cannot be obtained, and would be grounds for termination. On the flip side, most sales employees will accept this provision (with a little prodding) because they understand that if they are not meeting a minimum sales requirement, they are not providing a benefit to the employer.

4.) Defining "Sales." Equally as important as defining the commission is carefully defining the sales on which that commission will be paid. All too often, salesperson's employment contracts contain a simple sentence that says: "Commissions shall be payable on sales in the geographic area assigned to employee." Does this include only sales where the employee was the "procuring cause" of the sale…or all sales made in his region? Does it mean that the employee receives commission on sales to house accounts? What are the house accounts? Does the employee receive a full commission on all future orders from a new account he/she sells, no matter who gets the order? Is there a shared commission structure outside the assigned region? Which sales count against the minimum sales requirement?

Failing to address these and other important questions regarding commission and commissionable sales can lead to misunderstandings, confusion, employee dissatisfaction, and ultimately, litigation.

Warning. The purpose of this article is not to address all of the problem areas or components in a sales employment contract, nor to determine what type of contract is right for your company. Instead, it generally discusses a few of the most common problem areas. In order to create a salesperson's employment contract that works for both the employee and the employer, your company will need to spend some time analyzing the situation, create an outline of the desired arrangement, and review the proposed contract with your attorney.

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