

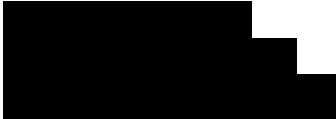


New York State Department of Labor

David A. Paterson, Governor

M. Patricia Smith, Commissioner

September 19, 2008



Re: Request for Opinion
Employment Contracts
File No.: RO-07-0116

Dear 

I have been asked to respond to your undated letter, received by this office on November 6, 2007, in which you state that although you had a written agreement with your employer stating that you would be paid an annual salary of \$40,000.00 plus commissions, on October 31, 2007 you were informed by your employer that your salary would be reduced to \$15,000.00 and that you would be required to pay for your own benefits, all without your consent. You ask whether "it is legal for them to make this change in salary without a new written agreement," and for "something in writing that states that our written agreement is binding and they cannot just change it without a new written agreement." As you did not provide a copy of the written agreement with your letter, it is not possible to determine whether the agreement or any provision of law has been violated by your employer's actions. Therefore, this letter will provide you with some general principles of law that you may use to determine what, if any, further action you may wish to take.

Although there is no provision of the New York State Labor Law specifically stating that written agreements are binding, Labor Law §191 states that employees, including commission salespersons, must be paid "in accordance with the agreed terms of employment," and Labor Law §198-c says, in summary, that employers must pay the benefits that they agreed to pay. As stated above, it is not possible to determine whether your employer has violated either the written agreement or either of these provisions of law without reviewing the actual written agreement.

If the agreement or the law has been violated, you have at least two options: you may make a complaint to this Department's Division of Labor Standards, State Office Campus, Building 12, Room 185A, Albany, New York 12240 (518-457-6190), or you may contact a private attorney of your choice. The Division of Labor Standards would be limited to determining whether or not you had been paid all wages and benefits that you should have been paid and, if not, to ordering your employer to pay you all unpaid wages and benefits, with

interest, together with a civil penalty to the Department of Labor. A private attorney, on the other hand, could bring a legal action for breach of contract in which your employer could be ordered not only to pay back wages and benefits, but, among other things, to pay such wages and benefits for the remaining term of the contract, and also to pay any damages that you may have suffered as a result of the contract breach.

Even if you were to provide this office with a copy of your contract, we could not give you advice as to which course of action would be best for you as this office cannot give legal advice to anyone other than the Commissioner of Labor and her agents. Therefore, you may wish to consult with a private attorney of your choice in regard to this situation. Please note that since many legal actions must be brought within certain time limits, if you are going to seek the assistance of a private attorney, it would be wise to do so quickly and give your attorney sufficient time to review the matter fully and counsel you on your options.

This opinion is based on the information provided in your undated letter received by this office on November 6, 2007. A different opinion might result if the facts provided were not accurate, or if other relevant facts were not provided.

Very truly yours,

Jeffrey G. Shapiro
Associate Attorney

JGS:jc

cc: Carmine Ruberto