



LAW NOTES

from the Law Firm of
Kay & Andersen, S.C.

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What Every Employer Should Know.....

ABOUT THE NEED FOR CLARITY IN EMPLOYEE COMPENSATION PLANS

Many employers compensate sales representatives and other employees in part or entirely on a commission basis. Disputes can sometimes arise between the employer and the employee as to the employee's right to recover commissions in certain circumstances. Such a dispute arose in a recent Wisconsin Court of Appeals case, *Brown v. Follett Corporation*, Appeal No. 2007AP2595 (July 29, 2008), found at <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=33514>. In that case, Brown marketed software to school districts for Follett and was compensated in part with sales commissions. Follett's compensation plan stated that the employee would earn a commission "for all software, products, and services bought in conjunction with a new automation system," and new systems would be "credited" or "applied" to the "commission plan" upon invoice. The plan also required that the employee "has actually earned the [commission], ...while in the company's employ." Brown claimed a right to recover commissions on three accounts for which she obtained purchase orders prior to her resignation, although she did not invoice the accounts until after leaving the company. Follett asserted that Brown was not entitled to the commissions, which led to Brown filing a wage claim with

the Department of Workforce Development's Equal Rights Division. The Court of Appeals noted that the compensation plan which Follett had drafted was ambiguous and would be construed against Follett. Although the compensation plan required that the employee earn the commission while employed, it was unclear when commissions were "earned." Brown relied on language in the compensation plan stating that commissions are earned when a new system is sold, while Follett relied on language essentially stating that sales are made when invoiced. Because both interpretations of the plan are plausible, but the plan language did not dictate one interpretation over the other, it would be interpreted in favor of Brown. In addition to recovering the commissions, Brown was also entitled to prejudgment interest because the amount she was owed was clearly provided under the formula in the compensation plan. This case serves as a reminder to Wisconsin employers that ambiguities in their employee compensation plans can result in significant liabilities beyond the employer's expectations and should be avoided. Kay & Andersen, S.C. has experience in developing clear and concise employee compensation plans for employers, and can assist employers defend against employee wage loss claims.

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