

Watch what you promise: Michigan employment contracts can be oral

In Michigan, employers and employees can enter into employment contracts without using written agreements. As long as one of the parties can prove what the terms of the agreement are, a court may enforce the agreement.

One way to protect your organization is to have all new hires sign an acknowledgment that no oral promises are binding, and that all contracts must be in writing. Otherwise, you risk that the terms remembered by the employee may be different from those you remember.

Having oral contracts lurking around can be especially expensive for organizations that pay salespeople on a commission basis. The Sales Representatives Commissions Act (SRCA) requires all commissions be paid within 45 days of discharge or the employer must pay a double penalty.

Recent case: Brothers Raymond and Mark Warring both went to work for Total Manufacturing Systems as commissioned salesmen. Mark was hired first and signed a written agreement specifying that he would earn a 30% sales commission.

When his brother joined the company, the manager told him the terms were the same, but Raymond never received a written contract to sign. While employed, both brothers did in fact receive 30% commission on their sales.

Then, right after the brothers made another sale, Raymond quit. The company never paid them, and the Warrings sued. A jury said the only one who could collect was Mark because his agreement was written. Raymond appealed.

The Court of Appeals of Michigan sided with Raymond. It reasoned that Michigan law allows oral employment contracts and there was no doubt about the terms because the company already paid commissions on prior sales. The court also doubled Mark's payments under the SRCA and sent Raymond's case back for the lower court to calculate how much he was owed under the oral contract. (*Warring and Warring v. Total Manufacturing Systems*, No. 261497, Court of Appeals of Michigan, 2007)