CHAPTER 65

Payment of Post‑Termination Claims to Sales Representatives

**SECTION 39‑65‑10.** Definitions.

 As used in this chapter:

 (1) “Commissions” means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a specified amount of each order or sale.

 (2) “Person” means an individual, corporation, partnership, association, estate, or trust.

 (3) “Principal” means a person who:

 (a) manufactures, produces, imports, or distributes a tangible product for wholesale;

 (b) contracts with a sales representative to solicit orders for the product; and

 (c) compensates the sales representative, in whole or in part, by commission.

 (4) “Sales representative” means a person who:

 (a) contracts with a principal to solicit wholesale orders;

 (b) is compensated, in whole or in part, by commission;

 (c) does not place orders or purchase for his own account or for resale; and

 (d) does not sell or take orders for the sale of products to the ultimate consumer.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Master and Servant Section 44, Compensation Based on Commission.

Treatises and Practice Aids

Williston on Contracts Section 54:51, Right of Defaulting or Discharged Employee to Compensation‑Commissions.

LAW REVIEW AND JOURNAL COMMENTARIES

Show Me the Money! Post‑termination Payment of the Commissioned Salesperson. Sept/Oct 2002 South Carolina Lawyer, page 36.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Terminated sales representative’s claim against former employer for unpaid commissions was not subject to the Payment of Post‑Termination Claims to Sales Representatives Act, and thus sales representative could not recover attorney fees or punitive damages, as sales representative did not solicit wholesale orders within meaning of the Act, where items that employer manufactured were sold for use by the purchaser or were sold to manufacturers to be included in a complete piece of operational equipment. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Principal And Agent 89(3)

District court did not lose subject matter jurisdiction when it allowed a former employee to amend his complaint to replace a claim under South Carolina’s Payment of Post‑Termination Claims to Sales Representatives Act (PPTCSRA) with a claim under the South Carolina Payment of Wages Act and a claim for treble damages; the amount in controversy requirement was met at all times due to the simultaneous removal of the original claim and its replacement with the latter, and in any event, the initial claim under the PPTCSRA was made in good faith and the district court had the discretion to retain any residual claims. Wall v. Fruehauf Trailer Services, Inc. (C.A.4 (S.C.) 2005) 123 Fed.Appx. 572, 2005 WL 428781, Unreported. Federal Courts 2514; Federal Courts 2527; Federal Courts 2531(2)

Determination that good cause existed to allow former employee to amend his complaint to replace a claim under South Carolina’s Payment of Post‑Termination Claims to Sales Representatives Act (PPTCSRA) with a claim under the South Carolina Payment of Wages Act and a claim for treble damages was a proper exercise of discretion; the employee moved to file a second amended complaint immediately after his counsel learned that a minor portion of his sales activities involved selling trailers to independent owners/operators, an activity that was not covered under the PPTCSRA, and the employer did not suffer any prejudice from the amendment. Wall v. Fruehauf Trailer Services, Inc. (C.A.4 (S.C.) 2005) 123 Fed.Appx. 572, 2005 WL 428781, Unreported. Federal Civil Procedure 841; Federal Civil Procedure 843

**SECTION 39‑65‑20.** Principal to pay commissions.

 When a contract between a sales representative and a principal is terminated for any reason, the principal shall pay the sales representative all commissions that have or will accrue under the contract to the sales representative according to the terms of the contract.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

CROSS REFERENCES

A principal’s civil liability for failure to pay commissions as required, see Section 39‑65‑30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 48, Wages and Commissions.

S.C. Jur. Master and Servant Section 44, Compensation Based on Commission.

NOTES OF DECISIONS

In general 1

Attorney’s fees 2

1. In general

South Carolina Post‑Termination Claims Act, requiring that principal pay sales representative full agreed upon commissions on “wholesale” transactions, upon termination of representation contract, did not apply to contract under which representative sold principal’s injection molding plastic products to manufacturers. Zauderer Associates, Inc. v. C & J Industries, Inc., 2005, 378 F.Supp.2d 682. Principal And Agent 81(5)

Testimony by sales representative that owner of company agreed he would be paid a full three percent commission on orders by retailer, and evidence that sales representative was paid three percent on some of the orders, was sufficient to establish that sales representative had an oral contract with company that he would be paid a three percent commission. Sherman v. W & B Enterprises, Inc. (S.C.App. 2003) 357 S.C. 243, 592 S.E.2d 307, rehearing denied. Labor And Employment 256(5)

2. Attorney’s fees

Evidence was insufficient to establish that former employee actually incurred attorney fees in action against former employer to collect unpaid sales commission, thus precluding award of attorney fees, where, although statute under which employee’s claim for unpaid sales commission authorized attorney fee award upon showing that employer violated statute, employee’s counsel testified that, as a personal friend, he had never billed employee for services performed in relation to case and that it was merely up to employee to decide whether he would someday arrange for payment. Williamson v. Middleton (S.C. 2009) 383 S.C. 490, 681 S.E.2d 867, rehearing denied. Labor And Employment 2204

Terminated sales representative who obtained judgment against employer for unpaid commissions was entitled to attorney fees incurred in such action, as words “is liable” in statute on attorney fees for terminated sales representatives who bring successful actions for commissions made such award mandatory. Sherman v. W & B Enterprises, Inc. (S.C.App. 2003) 357 S.C. 243, 592 S.E.2d 307, rehearing denied. Master And Servant 80(18)

**SECTION 39‑65‑30.** Principal’s civil liability.

 A principal who fails to comply with the provisions of Section 39‑65‑20 is liable to the sales representative in a civil action for:

 (1) all amounts due the sales representative plus punitive damages in an amount not to exceed three times the amount of commissions due the sales representative; and

 (2) attorney’s fees actually and reasonably incurred by the sales representative in the action and court costs.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 82, Post‑Verdict and Post‑Trial Motions.

S.C. Jur. Attorney Fees Section 48, Wages and Commissions.

S.C. Jur. Attorney Fees Section 77, Trial Judge’s Discretion.

NOTES OF DECISIONS

Attorney’s fees 3

Commission owed 1

Evidence 2

1. Commission owed

Sales representative was entitled to commissions on orders booked before his employment ended but not shipped until afterward, where employer’s practice was to pay such commissions. Sherman v. W & B Enterprises, Inc. (S.C.App. 2003) 357 S.C. 243, 592 S.E.2d 307, rehearing denied. Labor And Employment 174

2. Evidence

Testimony by sales representative that owner of company agreed he would be paid a full three percent commission on orders by retailer, and evidence that sales representative was paid three percent on some of the orders, was sufficient to establish that sales representative had an oral contract with company that he would be paid a three percent commission. Sherman v. W & B Enterprises, Inc. (S.C.App. 2003) 357 S.C. 243, 592 S.E.2d 307, rehearing denied. Labor And Employment 256(5)

3. Attorney’s fees

Evidence was insufficient to establish that former employee actually incurred attorney fees in action against former employer to collect unpaid sales commission, thus precluding award of attorney fees, where, although statute under which employee’s claim for unpaid sales commission authorized attorney fee award upon showing that employer violated statute, employee’s counsel testified that, as a personal friend, he had never billed employee for services performed in relation to case and that it was merely up to employee to decide whether he would someday arrange for payment. Williamson v. Middleton (S.C. 2009) 383 S.C. 490, 681 S.E.2d 867, rehearing denied. Labor And Employment 2204

Terminated sales representative who obtained judgment against employer for unpaid commissions was entitled to attorney fees incurred in such action, as words “is liable” in statute on attorney fees for terminated sales representatives who bring successful actions for commissions made such award mandatory. Sherman v. W & B Enterprises, Inc. (S.C.App. 2003) 357 S.C. 243, 592 S.E.2d 307, rehearing denied. Master And Servant 80(18)

**SECTION 39‑65‑40.** Frivolous action; sales representative’s liability.

 Where the court determines that an action brought by a sales representative against a principal under this chapter is frivolous, the sales representative is liable to the principal for attorney’s fees actually and reasonably incurred by the principal in defending the action and court costs.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 48, Wages and Commissions.

**SECTION 39‑65‑50.** Nonresident principals subject to personal jurisdiction.

 A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State is deemed to be doing business in this State for purposes of the exercise of personal jurisdiction over nonresidents under Part 8, Chapter 2, Title 36.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

**SECTION 39‑65‑60.** Effect of chapter on other rights and remedies.

 Nothing in this chapter invalidates or restricts any other right or remedy available to a sales representative or precludes a sales representative from seeking to recover in one action on all claims against a principal.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Terminated sales representative’s claim against former employer for unpaid commissions was not subject to the Payment of Post‑Termination Claims to Sales Representatives Act, and thus sales representative could not recover attorney fees or punitive damages, as sales representative did not solicit wholesale orders within meaning of the Act, where items that employer manufactured were sold for use by the purchaser or were sold to manufacturers to be included in a complete piece of operational equipment. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Principal And Agent 89(3)

**SECTION 39‑65‑70.** Effect of waiver of chapter provisions in contract.

 A provision in any contract between a sales representative and a principal purporting to waive any provision of this chapter, whether by expressed waiver or by a contract subject to the laws of another state, is void.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

**SECTION 39‑65‑80.** Restrictions on actions.

 Any person bringing an action under the provisions of this chapter may not bring an action under the provisions of Section 41‑10‑10.

HISTORY: 1988 Act No. 489, eff May 2, 1988.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Master and Servant Section 44, Compensation Based on Commission.

Treatises and Practice Aids

Williston on Contracts Section 54:51, Right of Defaulting or Discharged Employee to Compensation‑Commissions.