

# Worker sues Verizon to keep commissions

## A 'charge-back' system deducts pay if a customer cancels a contract.

By Melanie Payne -- Bee Staff Writer

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Commission sales is a tough job that gets harder when a customer returns an item, cancels a contract or fails to pay.

At some companies, salespeople must repay commissions if customers renege on sales -- called a "charge-back." Charge-backs can apply to selling everything from cars, to insurance or newspaper subscriptions.

But a Shingle Springs salesman says there's just one problem with this fairly common practice: It may violate California law.

James Logan, who works for Verizon Wireless in Folsom, filed suit in Alameda Superior Court on Wednesday alleging that charge-backs at the company violate California labor code. He is seeking class-action status for the suit, to cover about 600 other workers in California who sell cellular service for the company.

According to the suit, commissions were taken out of the Verizon employees' paychecks if customers canceled their cellular phone service within one year of signing up.

"It's like we're paying for our job," Logan said.

Logan said that he tried to talk with management about the problem but was rebuffed. Then last August when he made \$4,400 in commissions but had to pay \$2,100 in charge-backs from contracts sold up to 11 months before, Logan said he'd had enough.

"This involves 150 people in our call center. That's when I decided to get an attorney," he said. "I want Verizon to be fair and honest with all of us."

Verizon would not comment on the lawsuit.

Dean Fryer, a spokesman for the state Department of Industrial Relations, said charge-backs do seem to violate Section 221 of California's labor code. The law prohibits an employer from taking back "any part of wages that had been previously paid to the employee," Fryer said.

Defenders of the commission sales charge-back system say that it keeps employees honest and stops people from getting friends to sign a contract and then back out later.

"Commissions are an advance until the sales transaction is complete," said Michael Reagan, president and chief executive officer of the National Association of Sales Professionals.

If the sale is no good the company shouldn't let the salesman keep the commission, he said.

He conceded that a year is probably too long to allow charge-backs. "Any salesperson who agrees to such a charge-back program needs to have their head examined," he said.

Employees shouldn't have to go up against major corporations and sacrifice their jobs to protect their rights, said attorney Joshua Konecky, of the Oakland firm Goldstein Demchak, which is representing Logan. There is a law against this in California and Verizon is violating it, he said.

"It's like Verizon is using its labor to insure itself from speculative business losses," Konecky said. "Employees start the pay period off in debt to the employer. It's indentured servitude."

If Verizon loses money when a customer cancels, they need to "absorb it into in the cost of doing business," he said.

Salespeople shouldn't be rewarded for writing bad business, said Dan Moynihan, a principal with Compensation Resources Inc. in Saddle River, N.J. If "good business" in this case is a one-year deal, then the salesman is not doing his job if the business doesn't last a year, he said.

Some companies address this issue by holding back part of the commissions for the service period, Moynihan said.

But Mark Thierman, a Nevada attorney who also is suing Verizon in Los Angeles over charge-backs, disagrees with Moynihan's reasoning.

When the customer signs up and gets the activated cellular service the salesman should get paid his commission, Thierman said.

Charge-backs are common, Thierman said, which is why he has several class-action suits against various companies over the issue.

"It's rampant. Everybody does it," he said. "It's been going on for years."

But, he said, that doesn't mean it's legal.

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### **About the Writer**

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