

## **Recognizing Commercial Bribery in New York**

### **The Pitfalls of Payments and Gratuities**

#### **What is Commercial Bribery?**

- Conferring, offering, or agreeing to confer any benefit upon any employee, agent or fiduciary of a non-public employer or principal
- (i) without the knowledge or consent of the employer/principal, and
- (ii) with the intent to influence the employee's conduct in relation to the affairs of the employer.

#### **"Gratuities" and Bribes Are Not Distinguished**

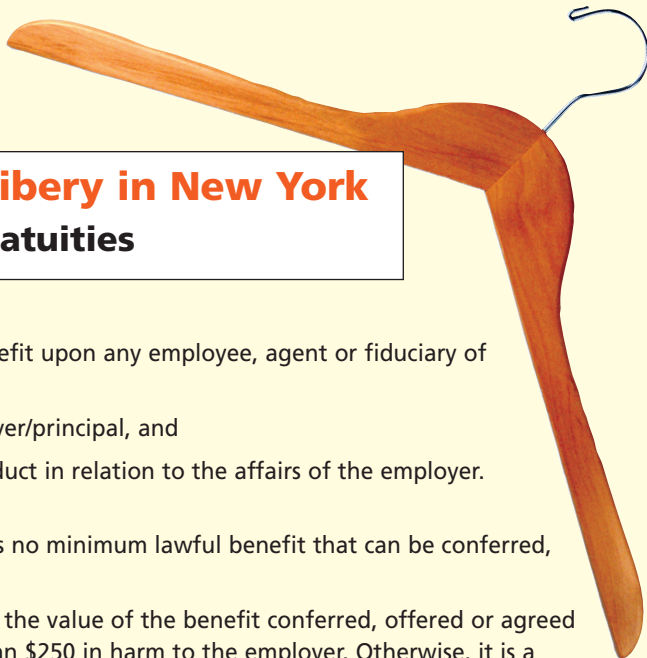
- Gratuities are not an exception to the rule – there is no minimum lawful benefit that can be conferred, offered or agreed to be conferred.
- Commercial bribery is a felony (max. 4 yrs, \$5000) if the value of the benefit conferred, offered or agreed to be conferred exceeds \$1000 and causes more than \$250 in harm to the employer. Otherwise, it is a misdemeanor (max. 1 yr, \$1000).

#### **No Statutory Affirmative Defenses**

- Unlike bribery of a public official, extortion and coercion are not affirmative defenses to commercial bribery.

#### **"Piggyback" Federal Crimes**

- Commercial Bribery can be used as a predicate act in connection with federal RICO (max. 20 yrs, forfeiture) and Travel Act (max. 5 yrs, min \$500) prosecutions.



## WHO TO CALL

### **Bob Rose**

(Practice Group Leader)

San Diego ■ (619) 338-6661

### **Mark Berube**

New York ■ (212) 332-3820

### **Jim McGuire**

New York ■ (212) 332-3801

### **Jack Fornaciari**

Washington, DC ■ (202) 218-0009

### **Pam Naughton**

Del Mar ■ (858) 720-8984

### **Jim McGinnis**

San Francisco ■ (415) 774-3294

### **Frank Polek**

San Diego ■ (619) 338-6662

### **David Geneson**

Washington, DC ■ (202) 218-0030

### **Richard Steingard**

Los Angeles ■ (213) 617-5416