

COMMERCIAL BRIBING FIRST DEGREE
Penal Law § 180.03
(Committed on or after Sept. 1, 1983)

The (specify) count is Commercial Bribing in the First Degree.

Under our law a person is guilty of Commercial Bribing in the First Degree when that person confers, or offers or agrees to confer, any benefit upon any employee, [agent or fiduciary] without the consent of his or her employer [or principal], with intent to influence the employee's, [agent's or fiduciary's] conduct in relation to his or her employer's [or principal's] affairs, and when the value of the benefit conferred or offered or agreed to be conferred exceeds one thousand dollars and causes economic harm to the employer [or principal] in an amount exceeding two hundred and fifty dollars.

The following terms used in that definition have a special meaning:

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.¹

INTENT means conscious objective or purpose. Thus, a person acts with intent to influence the conduct of an employee, [agent or fiduciary] in relation to his or her employer's or [principal's] affairs when that person's conscious objective or purpose is to do so.²

ECONOMIC HARM TO THE EMPLOYER [OR PRINCIPAL] means actual economic loss suffered by the employer [or principal] which would not have been incurred in the absence of

¹Penal Law §10.00(17). See *People v Feerick*, 93 N.Y.2d 433, 446-447 (1999).

²See Penal Law §15.05(1).

the corrupt arrangement.³

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following five elements:

1. That on or about (date), (specify) was an employee [agent or fiduciary] of (specify employer or principal);
2. That on or about that date, in the county of (county) the defendant (defendant's name), conferred, or offered or agreed to confer, a benefit upon such employee [agent or fiduciary] which exceeded one thousand dollars;
3. That the defendant did so without the consent of (specify employer or principal);
4. That the defendant did so with intent to influence the employee's [agent's or fiduciary's] conduct in relation to his/her employer's [or principal's] affairs; and
5. That the defendant's conduct caused economic harm to the employer [or principal] in an amount exceeding two hundred and fifty dollars.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

³ *People v Wolf*, 98 N.Y.2d 105 (2002).