

COMMERCIAL BRIBE RECEIVING FIRST DEGREE
Penal Law § 180.08
(Committed on or after Sept. 1, 1983)

The (*specify*) count is Commercial Bribe Receiving in the First Degree.

Under our law, an employee [agent or fiduciary] is guilty of Commercial Bribe Receiving in the First Degree when, without the consent of his or her employer [or principal], such employee, [agent or fiduciary] solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence such 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 solicited, accepted or agreed to be accepted 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

AGREEMENT means a mutual agreement between an employee [agent or fiduciary], and a person from whom he or she solicits, accepts or agrees to accept any benefit, valued in excess of one thousand dollars, that such employee's [agent's or fiduciary's] conduct in relation to his or her employer's [or

¹Penal Law §10.00(17).

principal's] affairs will thereby be influenced.²

UNDERSTANDING means at least a unilateral perception or belief by an employee [agent or fiduciary] who solicits, accepts or agrees to accept any benefit, valued in excess of one thousand dollars, that such employee's [agent or fiduciary's] conduct in relation to his or her employer's [or principal's] affairs will thereby be influenced.³

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 the corrupt arrangement.⁴

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 four elements:

1. That on or about (date), the defendant (defendant's name), 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 solicited, accepted or agreed to accept a benefit valued in excess of one thousand dollars from (specify);
3. That the defendant did so upon an agreement or understanding that such benefit would influence

²The definition provided has been drawn from *People v Tran*, 80 N.Y.2d 170 (1992), which defined the term "understanding" in the context of a bribe giving rather than a bribe receiving case. The Court of Appeals has not specifically adopted a definition of the term "understanding" in the context of a bribe receiving case.

³ *Id.*

⁴ *People v Wolf*, 98 N.Y.2d 105 (2002)

his/her conduct in relation to his/her employer's [or principal's] affairs;

4. That the defendant did so without the consent of his/her employer [or principal]; 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.