



# **TERMINATION PAY: NAVIGATING STATE REQUIREMENTS**

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# FINAL PAY ISSUES: WHY SO COMPLICATED?

- Limited Federal Governance
  - Only that payment is made in proper manner
  - Payment in “dope checks,” credit cards, coupons, or similar devices is prohibited (payroll debit card is allowed)
  - Timing of payment not addressed
- State’s have authority to set wage payment requirements
  - Various laws address timing and are more specific in manner of pay
- Most states specifically address when to pay at termination
  - Forty-six states and D.C. have provisions; 9 states require immediate payment on termination/discharge; more lenient on voluntary quit
- Fewer states provide guidance on including leave
  - Eighteen states don’t specify; 13 states look to employer policy
- Severance, equity pay, and payment after death
- Year-end and other reporting issues
  - Federal and state tax laws need to be reviewed

# WAGE PAYMENT REQUIREMENTS

## ➤ South Carolina

- Payment within 48 hours of the time of separation or by the next regular payday, which cannot be more than 30 days from the date of separation, discharge or quit (generally)
- Accrued leave pay out based on policy/contract/agreement
- No statute on deceased workers

## ➤ North Carolina

- Payment by the next regular payday, discharge or quit
- Accrued leave pay out based on policy/agreement; if employers provide vacation, they must pay all vacation time in accord with a company policy or practice; at least 24 hour notice needed in advance of any policy change that results in loss or forfeiture of vacation time.
- No statute on deceased workers

## ➤ Georgia

- No requirement for timing of final payment or for considering accrued leave
- Deceased workers: wages of up to \$2,500 of deceased employees can be paid to survivors without administration of the employee's estate; specific survivor order for final wages required

# WAGE PAYMENT REQUIREMENTS

## ➤ Tennessee

- Payment within 21 days or on the next regular payday, whichever occurs last, discharge or quit
- Employers with leave policies generally must pay accrued leave, however, company policy or agreement can exclude such pay at termination
- Deceased workers: An employee can designate a beneficiary to receive payment of any wages due should death occur; if an employee has not designated a beneficiary, up to \$10,000 in wages due can be paid directly to a surviving spouse, or to surviving children if there is no surviving spouse.

## ➤ Florida

- No requirement for timing of final payment
- Accrued leave pay generally by employee policy
- Deceased workers: specific survivor order for final wages

# TAX ISSUES TO CONSIDER (GENERALLY)

- Regular pay: tax as regular pay
- Accrued leave: tax using supplemental pay methods (see Circular E)
- Severance: tax as supplemental pay for income taxes/FICA (generally)
- Golden Parachute payments: subject to 20 percent excise tax and regular withholding; special W-2 reporting as well
- Stock options:
  - Incentive Stock Options and Employee Stock Purchase Plans: If premature disposition before end of holding period, considered income and reporting requirements come into play
  - Nonqualified Stock Options: Generally, the difference between the exercise price paid by the employer and the higher fair market value of the stock would be income and is subject to federal and FICA tax upon exercise (Form W-2, boxes 1,3,5 and 12 with code “V”)
  - Capital gains considerations on all these payouts
- Nonqualified Deferred Compensation Plans: review plan details for determining tax and reporting consequences
- Legal settlements: employment taxes apply to back pay for year paid; punitive damages are taxable; physical injury payments, including emotional distress can be nontaxable; special SSA reporting for back pay awards—see Pub 957

# DECEASED EMPLOYEE'S WAGES AND DEATH BENEFITS

- Consider date of death and timing of final pay
- Even if the employee died before cashing the last paycheck and a new check must be issued to a beneficiary or the employee's estate, income and FICA taxes must be withheld and the amounts so reported on Form W-2
- FICA taxes only due on wages paid after death (FUTA coverage still applies)
- Payments made in a subsequent calendar year are exempt from FICA and FUTA
- Payments for unused vacation, holidays, or other leave time are treated the same as unpaid wages
- Post-death wage payments are not included in Box 1 of the deceased employee's final Form W-2. Instead, they are reported as income to the beneficiary on Form 1099-MISC in Box 3, assuming they amount to at least \$600
- If the payments were subject to FICA, i.e., paid before the end of the calendar year, they should be included in Box 3 (Social Security wages) and Box 5 (Medicare wages) of the deceased employee's Form W-2, even though they are not reported in Box 1. This ensures full credit for social security purposes
- Payments made to a beneficiary (or estate) solely on account of the employee's death, as opposed to compensation the employee earned, are reported on Form 1099-R, issued to the beneficiary

## YEAR-END PROCESSING AND UNCLAIMED PAY

- If a former employee request in writing that a W-2 be sent before normal Jan. 31 delivery, an employer generally has 30 days after receiving the request to provide the W-2.
- If employee's termination is because an employer plans to cease operations, the employer must give the W-2s to employees at the same time the company files its last Form 941, Employer's Quarterly Federal Tax Return, generally Jan. 31, April 30, July 31, or Oct. 31
- The employer will typically have an additional two months to file Forms W-2 and W-3 with the Social Security Administration.
- **Unclaimed Wages:** Employers are required by states to report and remit any unclaimed property, such as final paychecks. Final wages often include, in addition to salary, amounts for life insurance, pension, vacation, and severance
- Unclaimed property amounts vary, as do state required reporting dates, and criteria for how to contact former employees
- BBNA chart builder on unclaimed wages (subscribers only):  
[http://hr.bna.com/hrrc/display/chartbuilder.adp?form\\_id=176635](http://hr.bna.com/hrrc/display/chartbuilder.adp?form_id=176635)

# OVERPAYMENTS AND OTHER OBLIGATIONS

- Overpayment at termination occurs in the best of organizations.
- Following a layoff of about 1,400 workers in January, 2009, Microsoft Corp. allowed 25 former workers to keep more severance pay than intended after initially asking them to give back the money because of a miscalculation that also led to 20 workers being underpaid
- Follow proper collection procedures and reporting requirements to back out/return taxes from recovering overpayments
- Report all terminations to appropriate authorities for unemployment, garnishment, child support, and tax levies.
- To avoid the issues Microsoft and others have faced in rectifying errors in final payments, develop a termination checklist covering the areas discussed in this report to ensure all variables are covered. Some employee terminations will only require a regular treatment of a final pay, but others will require a special tax treatment



HOW GREAT WOULD IT BE TO HAVE A  
LINK TO A CHART WHERE ALL OF THE  
INFORMATION IN THIS SESSION WAS  
  
IN ONE PLACE  
  
AND ALWAYS CURRENT?

# ON THE BBNA PAYROLL LIBRARY

- Go to [State Charts](#)
- Scroll to the bottom and click on [Final Wage Payments: Requirements](#)
- Each state listed is linked to a fuller summary of that state's position on pay at termination, including pay deduction info

# QUESTIONS?



**FURTHER QUESTIONS?**  
**CALL APRIL JONES OR MIKE BAER**  
**843/817-3828 OR 703/341-3801**





**THANK YOU**