



When an Employee Death Occurs (off the job)

The death of an employee, on or off the job, can be traumatic for the remaining employees. Management must juggle legal requirements, such as how to process a final paycheck, along with the reality of keeping the business running smoothly. Compassion and communication are essential in such an emotional time. Below is a list of considerations when an employee death occurs off the job.

People First

- Be sensitive to family. Ask for the name of a contact person who can provide more detail when known, and answer questions about the family's wishes.
- Designate an internal contact person for employees who have any questions or concerns in an attempt to avoid having employees contacting the family directly.
- Notify executives of the loss ASAP.
- Notify remaining employees and indicate more details will be forthcoming as available.

Keeping Business Moving

- Notify customers/clients who worked directly with the deceased.
- Reassign work as appropriate.
- Arrange to intercept and redirect phone, voicemail, email and mail communications.
- Consider and offer options for counseling for employees. EAP in place? Local hospice?
- Provide grieving employees with time off as needed.
- Have designated contact person keep track of all notes, flowers, etc. that arrive following the death so they can be collected for the family.

The Funeral/Memorial Service:

- The family may request donations in lieu of flowers; communicate this to employees as appropriate.
- Time off - recognize that many employees may feel a need to attend the service; be flexible and provide paid time off if at all possible.
- How does your company want to pay tribute to the employee? Ideas: a company service separate from funeral, plaque displayed in office, bench outside, etc. Check with your employees for more ideas.
- Consider creating a memorial fund or scholarship program if there are a number of employees who wish to donate, young children left behind by the employee, etc.

California Law Regarding Final Wages

- Begin procedures to process a final paycheck.
- Locate beneficiary designations for all benefits.
- Treat accrued but unused vacation, sick, PTO, etc. in accordance with state law.
- Determine how many certified death certificates will be needed to process benefits paperwork.
- Review Life insurance, accidental death and dismemberment, Pension/401(k) Workers' Compensation death benefits, if applicable.
- Terminate health insurance according to policy as of date of death.
- Determine balance of health care flexible spending account for health expenses prior to date of death notify family of procedure.
- Handle COBRA paperwork for dependents.
- **Process the final paycheck, including payout for accrued but unused vacation, as follows:**

1. Probate Code § 13600 provides that *in the event of the death of a worker, the surviving spouse/registered domestic partner or the guardian or conservator of the estate* of the surviving spouse/registered domestic partner may collect salary or other compensation owed by an employer to the deceased worker in an amount not to exceed \$20,875.00, as adjusted periodically in accordance with Section 890. Probate Code § 13601(a) sets out the form of affidavit which may be signed by the surviving spouse; OR

2. In other circumstances, California Code of Civil Procedure provides that *any unclaimed personal property (which would include wages) escheats to the State*. Unclaimed wages must be forwarded to the Controller of the State of California within three years after the debt was incurred. (See Code of Civil Procedure §§ 1500 et seq.)

Wages paid after an employee's death, but within the year of the death are NOT subject to federal income tax withholding, but subject to social security, Medicare and FUTA. If the money is issued to the spouse/conservator, the taxes must be included on the deceased employee's W2 while the taxable income should be on a 1099 for the beneficiary of the payment. The employer must pay up to \$20,875.00 in unpaid wages (including unused vacation pay) to the employee's surviving spouse or the estate conservator of the surviving spouse, provided the spouse or conservator has presented the employer with the necessary documentation (**Probate Code § 13600 et seq.**). The law applies equally to a surviving registered domestic partner. *Please consult with a tax professional to fully understand your obligations under state and federal tax law.*

Required documentation. To collect, the spouse, registered domestic partner, or conservator must present an affidavit to the employer, identifying him or herself, stating the name of the deceased employee, the date and place of the person's death, and other required (**Probate Code § 13601**). A spouse or domestic partner presenting the affidavit must provide reasonable proof of his or her identity; an estate conservator must provide reasonable proof of his or her appointment as estate conservator.

Discharge of liability. An employer is discharged from liability for the amount of compensation paid. An employer may rely on the statements in the affidavit as sufficient documentation and is not required to make additional inquiries or to verify the statements contained in the affidavit

Probate Code §§ 13603. If employers have questions or need information, they should contact the local probate department located in the county Superior Court.

Other Considerations:

- Follow normal termination checklist to ensure all equipment, keys, credit cards, etc. are returned and security issues are addressed.
- Arrange for packing and delivery of personal belongings (ask family how they want this handled); offer to do it for them if preferred. A close colleague or supervisor is best choice if family prefers not to be involved.
- When people don't have timely information and communication from management, rumors and gossip will begin with employees. Keep your employees informed as you gain more information. Allow employees to be involved with as much of this overall process (funeral, running the business, future memorials) as possible.
- Remember to note the first few anniversaries in some way.
- Keep in touch with family as appropriate.

Refer to Probate Code sections 13600-13606 for more information.