



## Final Paycheck Guidelines

Q – My employee just quit, can I give them their final paycheck when we process payroll next week? What if I fire someone, do I have to give them their check right away?

A – When the employer/employee relationship ends, you need to ensure that their final paycheck is in order or you may be subject to several penalties.

- **Voluntary Resignation:**
  - When an employee gives at least 72 hours notice that they will be leaving your employ, you are required to have their final paycheck ready for them on their last day.
  - If you receive less than 72 hours notice, you have 72 hours from the time of notice to produce their paycheck.
- **Employer-Initiated Termination:**
  - ***Any time the employer ends the relationship***, the final paycheck must be provided to the individual at the time of termination.

The final paycheck must include any earned, but unused vacation pay. There is no requirement under California law that an employer pay accrued sick leave upon termination. However, if your policy combines sick and vacation time under one “Paid Time Off” or “PTO” plan, then all earned, but unused PTO must be paid out at termination.

Q – If I get authorization from an employee to mail the final paycheck, when must I mail it so it is not considered late?

A – The answer depends on how the employment relationship ends.

- **Voluntary Resignation:** The Labor Code specifically authorizes the employer to send the final paycheck by mail in the case of a resigning employee who provides less than 72 hours’ notice *and agrees* to receive it by mail. Labor Code 202(a) says, notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The *date of the mailing* shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.
- **Employer-Initiated Termination:** The Labor Code does not specifically authorize the employer to send the final paycheck by mail when it is the Company who is ending the relationship, so it is not a best practice to do so.

Q – May I pay the final paycheck via direct deposit?

A – No. Even if the employee previously authorized direct deposit of wages, this agreement is immediately terminated when an employee quits or is discharged. The Labor Commissioner states that the only exception is when the employee has voluntarily authorized direct deposit of the final paycheck, and the employer must ensure to still comply with the deadlines/requirements in Labor Code Section 213(d).

Q – What happens if an employee receives his/her paycheck late?

A – In addition to paying the correct amount of compensation, employers are expected to pay it on time and in the manner required by law. Penalties for failure to pay wages due include: Payment to the employee of one day's wages earned multiplied by the number of days the paycheck was late, up to a maximum of thirty (30) calendar days.

Example: An employee who earns \$20/hour, works 8 hours/day and is due to receive a paycheck on Friday, but does not actually receive it until Monday would be awarded  $\$100 \times 2 \text{ days} = \$200$  by the Labor Commissioner. Fines payable to the Labor Commissioner are \$100 for an initial violation, and \$200 for subsequent and/or intentional violations. In addition, the state may also impose a penalty equivalent to 25% of the amount of the wages not paid in a timely manner.

Q – If I loaned an employee money, can I take the remainder of what s/he owes me from the final paycheck?

A – No, [according to the Labor Commissioner's office](#), although a California court has held that deductions for the periodic installment payments on a loan made to an employee by the employer are permissible when authorized in writing by the employee, the court also concluded that the balloon (lump sum) payment of the outstanding balance to be made at the time the employment relationship ends is not allowed notwithstanding the fact the employee has given his or her written consent to such a payment. When the employment relationship ends, the employer can only deduct the amount of one installment payment from the final paycheck. It is advisable to get legal advice before implementing a repayment plan that involves deductions from pay to ensure compliance with all California laws.

Q – What happens if an employee never comes to pick up their final paycheck at their regular worksite?

A – The Labor Commissioner's office states: If you have non-negotiated checks on your books and the checks are made payable to employees who have left your employment and whom you cannot locate, you may send the Labor Commissioner the non-negotiated checks, along with an explanation of your efforts to contact the employee, to the nearest office of the Labor Commissioner. The Labor Commissioner will make further efforts to locate the employee to make payment of the wages and, if unsuccessful, the checks will be deposited into the State of California Unclaimed Wages Fund. Click [here](#) to locate the nearest office of the Labor Commissioner.

It is therefore a best practice to cut the final paycheck consistent with final pay requirements, document each attempt to contact the employee, and after a reasonable amount of time, make copies of the check and all documentation for your files, then send by certified mail the check and supporting documentation to your local labor commissioner's office. A reasonable amount of time can be 6-12 months depending on number of attempts to contact the employee and the amount of time you gave the employee to respond. The key is to cut the final paycheck according to Labor Code requirements and maintain documentation of that fact.