

# Retirees entitled to prompt payment of final wages

Retirees have lots of time on their hands. Maybe that's why so many of them sue when they're not paid their final wages correctly and on time. The California Supreme Court has ruled that penalty wages, in addition to final wages, were due to a retiree whose final pay was late. (*McLean v. State of California*, 1 Cal. 5th 615, Cal. Sup. Ct., 2016)

**What's a quit?** Under California's wage payment laws, employers must pay final wages to employees who quit within 72 hours, unless employees give 72 hours' notice, in which case final wages are due on their last day of work. Employers that willfully pay final wages late are liable for up to 30 days of penalty wages, in addition to final wages.

An employee who was retiring gave 72 hours' notice of her intention to retire. She then sued her employer for penalty wages when it didn't pay all of her final wages on her last day of work. *Employer:* No penalty wages are due, because retiring isn't the same as quitting. A state trial court agreed that quitting and retiring aren't the same and ruled in the employer's favor. An appellate court reversed, so the employer appealed to the state's highest court.

The California Supreme Court, noting that wage payment laws must be interpreted broadly to protect employees, upheld the appellate court's decision. *California Supreme Court:* While state law doesn't define the word "quit," the dictionary defines it as leaving one's employment, which certainly applies to retirees. The court also pointed out that if the state legislature wanted an exception from the final pay laws for employees who were retiring, it would have written one into those laws. The employer, therefore, was on the hook for penalty wages.

**Tax treatment of penalty wages.** The IRS has concluded that penalty wages are taxable to employees, but not subject to withholding. *Reason:* Penalty wages are imposed under state law due to an employer's actions (or inactions) with respect to a final paycheck; they're not payment for services rendered. The IRS has also concluded that since penalty wages are similar to liquidated damages that are payable under the Fair Labor Standards Act, they should be reported in Box 3 of Form 1099-MISC, not in Box 1 of the employee's W-2.

**STATE LAW CHECKUP:** California isn't the only state that requires you to pay penalty wages in addition to regular wages. Some states require you to pay penalty wages to current and terminating employees; others limit them to terminating employees. To help you get a handle on this area of state wage payment laws, the chart linked below summarizes states' penalty wage provisions. To get the full story, visit your state labor department's website.

**Click the chart image to download.**

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All-States Chart on Penalty Wages

State	Law	State	Law
AK	Final pay: Lesser of 90 days' wages or wages payable on employee's demand	NC	Regular payroll pay: Up to the amount owed
AL	No law	ND	Regular pay/final pay: Double or triple the amount owed, depending on employer's history of wage violations
AR	Final pay: Up to 60 days' wages	NE	Regular pay/final pay: Twice the amount owed
AZ	Regular/final pay: Triple damages	NH	Regular pay/final pay: Lesser of wages due or 10% of the amount owed per day
CA	Final pay: Up to 30 days' wages	NJ	No law
CO	Final pay: Greater of 10 days' wages or sum of 12% of the amount owed, or \$70,000 and 50% per day that exceeds \$70,000	NM	Final pay: Up to 60 days' wages
CT	Regular payroll pay: Twice the amount owed	NV	Final pay: Up to 30 days' wages
DC	Regular pay: Amount owed, plus 10% in liquidated damages Final pay: Lesser of 10% of the amount owed per day, up to three times amount owed	NY	No law
DE	Final pay: 10% of the amount owed per day, up to the amount owed	OH	Regular pay/final pay: Greater of 5% of the amount due or \$200
FL	No law	OK	Regular pay: Twice the amount due Final pay: Lesser of the amount owed or 2% of the amount owed per day
GA	No law	OR	Regular pay: Greater of \$100 or triple the amount owed Final pay: Up to 30 days' wages
HI	No law	PA	Regular pay/final pay: Greater of 25% of the amount due or \$100
IA	Regular payroll pay: 5% of the amount owed per day	RI	Regular pay/final pay: Double damages
ID	Regular pay: Greater of 15 days' wages, up to \$750 or triple damages Final pay: 15 days' wages, up to \$750	SC	Regular pay/final pay: Up to triple the amount owed
IL	Regular payroll pay: Amount owed plus 2% per month	SD	Regular pay/final pay: Twice the amount due
IN	Regular payroll pay: Twice the amount due	TN	No law
KS	Final pay: Lesser of the amount owed or final wages plus 2% per day	TX	No law
KY	No law	UT	Regular pay: 5% of the amount owed, up to 20 days Final pay: Up to 60 days' wages
LA	Final pay: Up to 90 days' wages	VA	Regular payroll pay: 8% of the amount owed
MA	No law	VT	Regular payroll pay: Up to twice the amount owed
MD	Regular payroll pay: Triple damages	WA	Regular pay/final pay: 2% interest per month
ME	Regular payroll pay: Twice the amount owed	WI	Regular pay/final pay: 50% or 100% of the amount owed, depending on when paid
MI	Regular payroll pay: Amount owed, plus 10%	WV	Regular pay/final pay: Twice the amount owed
MN	Regular payroll pay: Up to 15 days' wages	WY	No law
MO	Regular wages: Up to twice the amount due Final wages: Up to 60 days' wages		
MS	No law		
MT	Regular payroll pay: 110% of unpaid wages		

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