Back to basics: Managing termination pay

The coronavirus pandemic has forced some employers to make tough choices about terminating employees. If that's the case in your company, you need to consider what goes into a final paycheck and when that check must be given to employees you're letting go.

What to pay

You can usually take all the regular deductions from a final paycheck, but there's more to consider. It's important to understand company policy and state laws on paying commissions and draws against commissions, accrued vacation, bonuses and PTO time. You must also understand how to handle employees who terminate with negative PTO balances.

Vacation and PTO time. Most states allow you set your cash-out policy, but employers in California, Colorado, Illinois, Montana, Nebraska and Rhode Island can't have use-it-or-lose-it vacation policies—employees' accrued time must be paid.

As for employees who terminate with negative PTO balances, the DOL says you may make deductions for negative time, even if employees are left with less than the minimum wage.

Unreturned company property. Early in the pandemic, lots of employers gave employees laptops loaded with special software and peripherals so they could work from home. If you're now thinking of letting some of these employees go, don't hold a final check hostage until they return this property to you. In general, most state laws require you to pay the final check, regardless of whether your property is returned. You'll have to use another method to retrieve your property. However, a handful of states do allow you to hold the final check, so you should check your state law.

When to pay

A handful of states—Colorado, Hawaii, Illinois, Massachusetts, Minnesota and Montana—generally require employees who are terminated to be paid immediately. But there are variations among even in those states.

Best practice: If you have offices in several states, apply the most stringent state law, which is paying immediately, to all the states in which you do business.

Best advice: If it looks like there's any wiggle room, be conservative. For example, Illinois employees must be paid by the next regular payday, if it's not possible to pay immediately. The issue is who determines whether it's not possible to pay immediately. You don't want the state to second-guess you.

Troubleshooting

Regardless of the circumstances of an employee's involuntary termination, the bottom line is that you should never pay termination pay on the fly. Here are some termination pay troubleshooting tips:

- Bring order to your process by implementing a workflow to gather termination documentation.
- Ensure first-level managers complete employees' termination paperwork.

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- Create a spreadsheet comparing company policy to state law to determine when to pay. *Reminder:* You can’t have one policy across the board unless you’re paying immediately.
- Ensure Payroll is notified of the termination.
- Track terminations by routinely filtering on the word “termination” in all emails. Ask for help from your HR and IT departments to do this.
- Have a noncompliance strategy. If you can’t comply with state law, suspend the employee with pay until you can collect the data you’ll need to cut the final check (e.g., the employee’s accrued vacation balance).
- Develop a termination checklist. This will help with your due diligence, should a state labor department come knocking.

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