

Policies for Payments Upon Death, Termination or Retirement

Effective Date 12/22/14

DESCRIPTION: This policy identifies the tax computation and reporting procedures agencies must follow when making payments upon termination, death or retirement.

POLICIES:

State Accounting has determined that whenever an employee leaves State government, the State does not have to make a singular payment (usually via an interim) to pay sick leave or vacation leave if the amount is less than \$2.00, which is the same amount Revenue uses for tax refunds. However, if the sick leave or vacation leave, no matter how small can be added to the employee's last paycheck, then the immaterial amount can be paid on the last payment.

Terminated Employees Including Voluntary and Involuntary Terminations:

1. Unpaid wages must be paid on the next regular payday, or within two weeks of the date of termination, whichever is sooner. (Section 48-1230, R.R.S., 1943)
2. The employing agency must also deliver a corresponding wage statement (pay stub) to the terminated employee for any unpaid wages either by U.S. Mail or make available by other means approved by the terminated employee. (Section 48-1230 (2), R.R.S., 1943)

Deceased Employees:

1. Unpaid wages, vacation pay and accumulated unused sick leave of a deceased employee, are to be paid to the employee's estate. (Section 30-24,125)
 - a. The final pay warrant is to be issued in the name of the estate of the deceased employee, and is to be retained by the agency until the agency is presented with the proper legal documents to obtain its release.
 - 1) In the cases of small estates, thirty days after the death of the employee, the agency may release the warrant to the person who is the successor of the employee upon being presented with an affidavit (see page 4 of this document) stating that:
 - a) the value of the entire estate subject to probate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars;
 - b) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;
 - c) the claiming successor's relationship to the decedent; if there is no relationship, the basis of the successor's claim to the property;

d) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

e) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

f) if the successor is entitled to payment of delivery of the property.

Agencies may forward to the survivor of the employee a copy of the affidavit supplied with this procedure.

2) In cases other than the above, the final pay warrant may be released only to a person evidencing, by a certified copy of letters of personal representative, that he or she is the legal personal representative of the employee's estate.

b. Unpaid wages and vacation pay paid to the estate of a deceased employee are not considered wages subject to federal and state income tax withholding. Therefore, these payments do not represent an increase to FIT Gross, and no income taxes are to be withheld on them. If paid before the close of the calendar year in which the employee died, they are considered wages subject to social security withholding, and therefore represent an increase to social security Gross. If paid after the close of the calendar year, they are not considered as such.

c. Accumulated sick leave paid to the estate of a deceased employee is not considered wages for either federal or state income tax withholding or social security withholding.

d. If the employee is enrolled in a State retirement plan at the time of death, then the payment made for unpaid wages, vacation pay, and accumulated unused sick leave is also subject to retirement withholding.

e. For health and life insurance deductions, the agency should reference the Department of Personnel guidelines.

2. Unpaid wages, vacation pay and accumulated unused sick leave paid to the deceased employee's estate must be reported on Statement for Recipients of Miscellaneous Income, Form 1099-MISC, as other income (Box 3).

a. Each agency is responsible for obtaining the name, address, and social security number of the person entitled to receive the final pay warrant, or the address and federal identification number of the deceased employee's estate.

b. This information is to be forwarded to State Accounting, where the 1099 will be prepared and issued.

3. The sick leave payment is one-fourth of the employee's accumulated unused sick leave up to a maximum amount. The rate of payment is based on the employee's regular pay rate at the time of the employee's death. The maximum amount, the number of hours of the sick leave payment

and the rate of payment is established by Sections 81-1323 and 81-1325, R.R.S., 1943 and by labor contracts.

4. Payments upon death must be made using the Interim Payroll.

Retired Employees:

1. Unpaid wages, vacation pay, and accumulated unused sick leave are paid to an employee upon the employee's retirement, resignation in lieu of retirement or disability retirement.

a. Unpaid wages, vacation pay, and accumulated unused sick leave paid upon retirement are subject to federal and state income tax withholding. For Federal withholding a flat rate of 25% rather than the Federal withholding tables may be used at the employee's option. This is in accordance with the Internal Revenue Service guidelines for supplemental wage payments. The current state rate of 5.0% is to be used to arrive at the state income tax withholding. However, if no regular wages have been paid in the calendar year in which the supplemental payment is being made, tax withholding on the supplemental payment must be computed as if it were a regular wage payment made under a miscellaneous payroll period. An employee may file a new W-4 form to provide for proper withholding levels.

b. Unpaid wages and vacation pay paid to the employee upon retirement are subject to social security withholding.

c. Accumulated unused sick leave payments are subject to social security withholding if the employee is retiring due to age. Payments for accumulated sick leave made to employees who retire due to disability are excluded from social security wages.

d. If the employee is enrolled in a State retirement plan at the time of retirement, any payment made for unpaid wages, vacation pay, and accumulated unused sick leave is subject to retirement withholding.

e. For employees retiring as of December 31, vacation and sick leave accounts are to be balanced after payment of vacation and unused sick leave. (Reference Sections 81-1323 and 81-1328, R.R.S., 1943)

2. The sick leave payment is one-fourth of the employee's accumulated unused sick leave up to a maximum amount. The rate of payment is based on the employee's regular pay rate at the time of the retirement. The maximum amount, the number of hours of the sick leave payment and the rate of payment is established by Sections 81-1323 and 81-1325, R.R.S., 1943 and by labor contracts.

3. Payments upon retirement may be made using the Interim Payroll or if possible added to the final payroll.

