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## DEAD PEOPLE'S WAGES

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Having an individual die, regardless of cause, while employed would certainly be traumatic to a business and to co-workers. Absent the unlikely event of the death occurring coterminous with the end of a pay period and the individual having been actually paid for all work performed through the time of death, the situation can also present very special payroll problems. Generally the deceased employee has some amount of accrued salary or wages which will be due and payable after the death. Frequently, a deceased employee will have a spouse (with one or more dependents) who may have an urgent need for cash and request that the final paycheck be paid directly to him or her.

By making the final paycheck of a deceased employee for services performed prior to death payable to a spouse or beneficiary of the decedent rather than to the estate, the employer is not discharging its legal obligation with regard to the payment of wages. This is true even if the spouse is the sole beneficiary of the decedent's estate under a will (about which the employer may or most likely will not know) or pursuant to Iowa intestacy (disposition of assets in the absence of a will) law. The "proper" way under the law is to make the "final" paycheck made payable to the estate of the decedent, and to deliver it to the executor or administrator of the estate as identified in "letters of appointment" certified by a local court of law. Under Iowa law, a person who in good faith pays money or property to the estate's fiduciary (the executor or administrator) is protected against the claims of third parties and is not responsible for any misapplication by the fiduciary. Iowa Code § 633.78.

Even if the employee's spouse is designated as an executor in the decedent's will, an employer should still require that a probate estate be opened and ask to see a certified copy of letters of appointment. By making the payment of the "final" (or any other) paycheck to the spouse, the employer has – under the law – failed to properly discharge its legal obligation. If the decedent's estate is "insolvent," a creditor or beneficiary may look to the employer for payment to the estate despite the fact that payment was already made to a spouse or another beneficiary. If no estate is opened for the deceased employee, the employer should hold the wages for one year and then pay it over to the Iowa Treasurer as unclaimed property. Iowa Code § 556.9 (2013). See the Treasurer's website at

[https://www.greatiowatreasurehunt.com/compliance\\_reporting/instructions.cfm](https://www.greatiowatreasurehunt.com/compliance_reporting/instructions.cfm) for more

information. An exception to this rule applies if the value of the estate of the deceased employee is less than \$25,000 and the successor in interest to the deceased person's estate submits an affidavit to the employer in accordance with Iowa Code Section 633.356 (2013).

The Internal Revenue Service has a set of strange and confusing rules for tax withholding on a deceased employee's final paycheck. There are three relevant taxes that need to be managed: Federal income tax withholding, FICA tax withholding and FUTA tax.

- For Federal income tax withholding, the Internal Revenue Service states that no income tax withholding needs to be made on a deceased employee's final paycheck and the wages should never be reported as taxable income (box 1) on the employee's W-2 Form. Instead, the gross wages are reported on a Form 1099-MISC (box 3, miscellaneous income) issued to the estate of the decedent but only if the wages are \$600 or more.
- In addition to issuing a 1099-MISC to the estate of the deceased employee, an employer is required to withhold, account for and pay FICA (both Social Security and Medicare, if applicable) and FUTA taxes on a deceased employee's final paycheck if the final paycheck is delivered in the same calendar year in which the employee died. In such case, the employee's W-2 Form for the year will include the final paycheck amount as gross wages for Social Security (box 3) and Medicare (box 5) purposes (nothing goes in box 1), subject of course to the Social Security wage limitation. Such inclusion will also increase the decedent's wage base for purposes of computing the surviving spouse's and dependent's survivor benefits for Social Security. If the final paycheck is delivered in a calendar year following the year of death, then no FICA or FUTA taxes need be withheld or paid by the employer. Clearly, this may present some planning opportunities for the employer and the estate. Assuming FICA taxes are substantial, the estate and the employer would be better off to postpone receipt of the decedent's final paycheck until the next calendar year, even though it may slightly reduce Social Security survivor benefits. Such a decision should be joint. If not a joint decision, an employer has an obligation to pay the decedent's last wages upon demand by the decedent's duly appointed executor or administrator.

For further information on withholding and payment of taxes from a deceased employee's wages or salary, see Internal Revenue Service Revenue Ruling 86-109 and instructions to Form W-2.