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3 things departing employee must receive when terminated

By **Dan Eaton**
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As the coronavirus pandemic recedes, many employees are leaving their jobs in what is being called “the Great Resignation.” Other employees are being terminated for, among other reasons, refusing to comply with their employer’s vaccine mandate. Here’s what an employee should get upon separation from employment.

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Final pay

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Under Labor Code section 227.3, an employer also must pay at time of separation the value of earned and unused vacation time at the employee’s final pay rate. An employee is not entitled to receive the value of unused sick leave. Blended “paid time off” is treated as vacation pay due for this purpose.

An employee who quits after giving his or her employer at least 72 hours’ notice also must receive final pay on the last day of employment. An employee who gives less than 72 hours’ notice of their intention to quit must receive final wages no later than 72 hours after providing notice.

Under Labor Code section 208, an employer must give terminated employees their final pay where they are discharged. The same provision requires that an employer give an employee who quits pay at the office of the employer in the county where the employee worked. An employee who quits with less than 72 hours’ notice, however, may ask the employer to mail the final pay to the employee’s designated mailing address. Where such a request is made, California Labor Code section 202 treats the payment of final wages as timely if the employer mails it within 72 hours of the employee’s notice of quitting.

The employer must pay the employee up to 30 calendar days of waiting time penalty pay for any delay in making timely payment of final wages indisputably due. Only amounts an employer disputes in good faith that an employee is owed may be withheld. An employee who dodges his or her employer’s attempt to pay the employee’s final wages is ineligible for this waiting time pay.

Notice to employee as to change in relationship

Under Section 1089 of the California Unemployment Insurance Code, an employer must immediately notify an employee of any change in the employment relationship. Applicable regulations require the notice to be given no later than the effective date of an employer-imposed discharge, layoff, leave of absence, or change in status from employee to independent contractor. The state Employment Development Department (EDD) explains on its website that an employer need not provide such notice to an employee who voluntarily quits or is promoted or demoted. An employer's failure to provide legally required notice is a misdemeanor.

The **sample form** the EDD posts gives the employer the specific choice to indicate the employee was or will be (1) laid off/discharged or (2) placed on unpaid leave of absence. A third option enables an employer to indicate a different change in employment status. The sample document has a place for the employer representative, but not the employee, to sign.

Even though not required, employers should consider modifying the form to add an option indicating an employee has voluntarily quit and a space for the employee to sign and acknowledge receiving the form. That may be useful if the employee later challenges the circumstances or timing of the separation.

For your benefit: California's programs for the unemployed

Section 1089 of the Unemployment Insurance Code also requires an employer to give an employee subject to full or partial discharge, layoff, unpaid leave of absence, or shift to independent contractor **an EDD pamphlet** explaining such programs for the unemployed as unemployment insurance, disability insurance, paid family leave, and a range of other workforce services, including job search and résumé workshops.

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