



Frequently Asked Questions When an Employee Passes Away

1. To whom may we release the employee's unpaid wages?

The employee's unpaid wages should be paid to the personal representative (the individual or institution that has qualified as executor or administrator) of the deceased employee's estate upon the personal representative's providing the district with either letters testamentary or letters of administration. Tex. Estates Code §§ 306.001, .002, 351.151.

2. May we release a deceased employee's unpaid wages to his or her surviving spouse?

A district may release a deceased employee's unpaid wages to his or her surviving spouse if the surviving spouse is the personal representative of the deceased employee's estate. Tex. Estates Code §§ 304.001, 351.151. If there is no administration of the deceased employee's estate and therefore no personal representative, a district may release the unpaid wages and any other community property to the surviving spouse if the spouse provides a notarized affidavit of authority. Tex. Estates Code § 453.003-.004. The district does not have to prove the validity of the affidavit and may release unpaid wages to the surviving spouse without potential liability. Tex. Estates Code § 453.004.

3. What if the employee was not survived by a spouse—may we release the unpaid wages to a family member?

No. The surviving spouse is the only person authorized under Texas law to claim unpaid wages or other property of a deceased employee without court appointment. If the employee was not survived by a spouse, only an executor or administrator who has been appointed by a court to the employee's estate may claim the unpaid wages. The executor or administrator must present the district with letters testamentary or letters of administration, respectively, evidencing the appointment. Tex. Estates Code §§ 304.001, 306.001, .002.

4. What if there is no named executor or administrator or surviving spouse?

The district should treat the unclaimed wages as abandoned property. Unpaid wages are presumed abandoned when two conditions exist for longer than one year. First, the district is unable to locate the person to whom the wages are owed, or the existence of such person has remained unknown. Second, the district has no knowledge of an asserted claim to the wages nor has an act of ownership been exercised. Tex. Prop. Code § 72.1015. If the district has knowledge of an asserted claim or an act of ownership has been exercised, the district should consult its legal counsel for further guidance.

5. How should the district handle unclaimed wages that are considered to be abandoned?

The treatment of abandoned wages depends on the amount of the wages. If the wages are valued at \$100 or less, the district's treasurer is charged with providing required notices, deciding claims, and maintaining an unclaimed property fund. Tex. Prop. Code §§ 76.001, .201, .502, .601. The *treasurer* is the person in the district performing the duties of a treasurer. Tex. Prop. Code § 76.002(a).

If the value of the wages is greater than \$100, the funds are ultimately delivered to the Texas comptroller of public accounts for disposition. Tex. Prop. Code ch. 72. By March 1 of each year, the district's treasurer must file a report with the comptroller listing all unclaimed property valued at more than \$100 that is being held by the district. Tex. Prop. Code § 74.101. If the abandoned wages exceed \$250, the district must also mail a due diligence letter to any potential claimant, by May 1. Tex. Prop. Code § 74.1011. By July 1, the district must deliver the unclaimed property to the comptroller. Tex. Prop. Code §§ 74.101, .301. A district that delivers property to the comptroller in good faith is relieved of all liability to the extent of the value of the property for any claim that may be made with respect to the property. Tex. Prop. Code § 74.304. More information and helpful forms are available on the unclaimed property section of the comptroller's [website](#).

6. How do we handle any unclaimed personal items left by the deceased employee?

Personal items should be handled in the same manner as unpaid wages. If an executor or administrator presents letters of appointment to the district, the items may be released to the executor or administrator. If the employee has a surviving spouse, and the spouse has provided an affidavit of authority, any items that are community property may be released to the spouse. If the district does not receive appropriate paperwork from a surviving spouse, executor, or administrator, the district should follow the same procedure, described above, as for abandoned wages.

7. What special tax rules apply to the final payment of wages for a deceased employee?

The tax rules vary depending on whether the wages are paid in the same calendar year that the employee dies or a subsequent calendar year. If wages are paid to a surviving spouse or to the estate of a deceased employee in the same calendar year as the employee's death, the wages are exempt from withholding for federal income tax (FIT). However, the wages continue to be subject to Federal Insurance Contribution (FICA) taxes and Federal Unemployment (FUTA) taxes. Internal Revenue Service, Dep't of the Treasury, *General Instructions for Forms W-2 and W-3* 8 (2019).

If wages are paid to a surviving spouse or to the estate of a deceased employee after the calendar year of the employee's death, the wages are exempt from FIT withholding, FICA taxes, and FUTA taxes. Internal Revenue Service, Dep't of the Treasury, *Employer's Tax Guide* 38 (2019).

Regardless of whether the wages are paid in the year of death or after the year of death, the district must also report a payment to the estate or spouse as Miscellaneous Income on Form 1099-MISC. However, if the payment is a reissuance of wages that were constructively received by the deceased employee while he or she was still alive, the payment should not be reported on Form 1099-MISC. Internal Revenue Service, Dep't of the Treasury, *General Instructions for Forms W-2 and W-3* 8 (2019).

If you have any legal questions about this article or any other legal issue, feel free to call TASB Legal Services at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/personnel/documents/faq-when-an-employee-passes-away.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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