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Separated Employees: Preparing the Final Paycheck

There are various state and federal payment, benefit and notice laws that may apply when an employee is separated from employment (either for cause, voluntary resignation, etc). Federal wage and hour laws generally apply to all employers and employers should be mindful of requirements under various state laws. Relevant state laws for Georgia, North Carolina, and Virginia are noted in this E-Alert where applicable. Generally with employment laws, the law providing greater protection or benefit to the employee takes precedent. If state law is silent, the federal regulations apply (and vice versa).

Deductions from Final Wages

Generally speaking, federal law states that an employer cannot make certain deductions from an employee's wages if the deductions cause the employee's pay to fall below the minimum wage in any workweek and certain deductions cannot be taken from overtime earnings. Related examples include deductions for certain debts owed by the employee to the employer such as deductions for cash or inventory shortages, damage to company property, or any deductions for the employer's benefit. Some states require employers to obtain voluntary authorizations from employees prior to making any of the above deductions (and in some cases, any deductions at all). Deductions can be made for the advancement of wages and the advancement of paid time off even if such deductions cause the employee's pay to fall below minimum wage.

Evaluate deductions carefully for exempt employees. Federal law permits certain limited deductions from an exempt employee's salary. An employer is not required to pay the full salary in the terminal week of employment if the employee only works a partial week.

North Carolina—Deductions for advanced wages or overpayment of wages can reduce wages below minimum wage and can be done so without authorization from the employee. Employers should, however, provide proper written notice at the time an advancement is provided.

An employer may withhold or deduct any portion of an employee's wages when: 1) the employer is permitted by state or federal law; 2) when both the employer and employee are aware of the amount of the deduction and have agreed to it and the employee has given prior written consent as defined by state law; and 3) if the employee does not know the amount of the deduction and has not agreed to it in advance, the employer must obtain written authorization from the employee as defined by state law.

Virginia—The only deductions allowed are: 1) payroll, wage or withholding taxes, and deductions otherwise authorized by law, and 2) those amounts authorized to be deducted by written and signed authorization of the employee. The authorization must be truly voluntary and not signed as a condition of employment.

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In other words, deductions for debts owed by the employee (including the advancement of vacation time) and deductions for cash shortages must be authorized by the employee in writing and voluntarily.

Payment of Unused, Accrued Fringe Benefits

Under federal law employers have the right to establish paid time off accrual and payment policies provided the employer honors those policies and does not discriminate. Generally, the employer can decide under what conditions, if any, employees receive payment for any unused, accrued paid time off at the time of separation. To avoid state contract law violations, it is recommended that employers provide employees with a written policy regarding the conditions under which an employee is entitled to payment of unused, accrued paid time off or the conditions under which an employee with forfeit such rights.

North Carolina—State law in North Carolina specifically requires payment of all “wages” (e.g. including accrued vacation pay, sick pay, bonuses, etc.) to a separated employee on or before the next scheduled pay day after separation unless: 1) the employer has a policy covering vacation pay, sick pay, bonuses, etc.; 2) these policies are made available to employees in writing or through a posted notice; 3) the policy specifically provides for forfeiture of such benefits upon separation.

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Per federal law, all employers who normally employ 20 or more employees on a least 50% of its typical working days during the prior calendar year are covered by COBRA. Below are the specific state Health Care Continuation & Conversion laws that apply to employers with less than 20 employees.

Georgia—Employers with 1-19 employees must provide continuation of coverage under the group health plan for 3 months if the employee was covered for 6 prior consecutive months and when a qualifying event occurs.

North Carolina—Employers with 1-19 employees must provide continuation of coverage under the group health plan for up to 18 months if the employee was covered for 3 prior consecutive months and when a qualifying event occurs.

Virginia—A group health policy in Virginia must contain one of two options for persons whose policy ceases because of their ineligibility for coverage: 1) offering 12 months of continuation coverage under the current group policy rate [not applicable to policyholders covered by federal COBRA] or 2) conversion to an individual policy.

Termination Notice

The federal Worker Adjustment and Retraining Notification (WARN) Act provides certain notice protections to employees involved in plant closures and mass layoffs. WARN applies to employers that employ 100 or more employees and anticipate a permanent shutdown of a single site of employment or mass layoff affecting at least 33% of active employees and at least 50 employees. (Contact HR|Experts for more information regarding WARN and the advanced notice requirements.)

Georgia—The State of Georgia specifically requires an employer to complete Form DOL-800, “Separation Notice”, when any employee is separated from employment, regardless of the reason, and to provide the completed form to the employee on the last day of their employment.

For more information regarding the contents of this E-Alert or for sample Separation Checklists and Exit Interviews, contact HR|Experts at jill.schultz@callhrexperts.com or 888-473-9778.