

DECEASED EMPLOYEE'S FINAL PAYCHECK

QUESTION: We are sad because one of our favorite employees, Cliff, died over the weekend. His death came as a shock to us all, and we're still reeling from the news. The other employees are even planning a memorial service for Cliff, a sort of tribute to his life.

Cliff's wife died several years ago, and although they never had children together, we assumed Cliff was close to his wife's two sons because he often referred to their children as his "grandkids." He even had a photo of them as his screen saver and in picture frames around his workstation.

Since Cliff's wife is deceased, we decided to mail his unpaid wages to his stepsons. Each one received half of Cliff's net final paycheck.

Once the checks were in the mail, one of the employees contacted Cliff's stepsons to invite them to our tribute. She was shocked to find out that they were both surprised by the news of Cliff's death. Also, both of them told her in no uncertain terms that they were not close to Cliff.

Our dilemma is that we now realize that our assumption that the stepsons had an ongoing family relationship with Cliff was erroneous.. Though we still believe Cliff would've wanted the money to go to his grandkids, we realize we've probably done the wrong thing by splitting his final wages between Cliff's estranged stepsons.

Are there any laws about what to do with a deceased employee's outstanding wages?

ANSWER: Yes. There is a state statute that specifically addresses what an employer should do with a deceased employee's earned but unpaid wages. ORS 652.190 dictates that all wages earned by an employee, not exceeding \$10,000, shall, upon the employee's death, become due and payable to the employee's surviving spouse. If there is no surviving spouse, the earned but unpaid wages go to the employee's dependent children (or their guardians or the conservators of their estates), in equal shares, to the same extent as if the wages had been earned by the surviving spouse or dependent children.

Thus, as you probably already learned from the way this situation unfolded, you should have determined whether Cliff had a surviving spouse (even though you believe that she had already passed away) and if not, whether he had any dependent children entitled to the wages pursuant to Oregon law. Though the stepsons may or may not have been Cliff's children in a legal sense, the conversations your employee had with them following Cliff's death make it seem unlikely that they are "dependent" children as set forth in the state statute.

If a deceased employee has neither a surviving spouse nor any dependent children, the employer should make the earned, unpaid wages available to the employee's estate by contacting the personal representative or executor of the estate. This is also what an employer should do with any unpaid wages in excess of the \$10,000 limitation set forth in ORS 652.190.

So, even though your heart was in the right place when you attempted to get the money to the stepchildren, as you thought Cliff would have wanted, you should have contacted the personal representative for Cliff's estate to determine what to do with his final paycheck.