

## WHAT WERE THE MOST “POPULAR” QUESTIONS IN 2006?

As 2006 draws to a close, we’d like to pause and remember some of the most common questions we have received on the Technical Assistance advice line this year. Since we don’t keep statistics on how often every question is asked (can you imagine?) this is anecdotal only. However, certain subjects came up so often that they basically voted *themselves* into our most “popular” category. Here are some of them:

**Question: What does the law say I should do if I can’t find my employee to give him the final paycheck? Do I have to mail it to him? Does the letter have to be registered? Does the employee have a certain number of days to respond?**

Answer: The applicable law, ORS 652.140, gives timelines as to when an employee’s final paycheck becomes “due and payable.” For terminations, the paycheck is “due and payable” to the employee by the end of the next business day after the termination. If the employee resigns, the “due and payable” date is different, depending upon whether the employee gave at least 48 hours notice.

That’s pretty much all the detail given in the statute. Nothing is said about what to do if the departing employee doesn’t return your phone calls, or if she doesn’t show up to pick up her check when she said she would. And while some employers may be annoyed by the lack of specifics, the statute at least does give them the freedom to handle these situations in the way they think is the most fair. Our suggestion (and it is JUST a suggestion) is that an employer make several attempts to contact the employee to let him know that his paycheck is in the office waiting for him. These attempts can include leaving voicemails, and also writing to the employee (e-mail as well as snail mail). If the employee still hasn’t surfaced after 5 years, you must turn over the unpaid wages to the Oregon Department of Lands.

**Question: Why should I have to make my employee take a lunch break if she doesn’t want to?**

Answer: There are several reasons. The shortest reason is, “Because it is the law,” but you probably would appreciate a little more guidance than that.

Often, employers ask this question not because they don’t agree with the law, but because they are having a hard time getting their employees to do what the law requires. Here are some suggestions:

Don’t try to argue with your employees about whether or not the law makes sense. The fact is that this law exists, and you can be subject to financial penalties if you don’t make sure that your employees take those breaks and meal periods as required.

You can also advise your employees that you consider a violation of these rules to be as serious as other violations of company policy, and that they could be subject to discipline if they do not

follow it. If you politely appeal to their sense of self-interest rather than to their opinions, that may convince them to do what you ask.

**Question: What is “undue hardship” under the Americans with Disabilities Act?**

Answer: This is a very difficult question to answer, because so much depends upon the facts of each individual situation. What is “reasonable” for one employer may be an “undue hardship” in another setting, depending upon such things as the number of employees, resources available to the employer, customer demands and the physical nature of the job. The law also requires that the employer meet with the employee and discuss different accommodation options, so that both can learn from each other about the company’s needs and the employee’s abilities. This is called the “interactive process,” and it can be very effective in a variety of situations.

For more information about these and other important subjects for Oregon employers, please visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824.

Happy New Year!