

HR Tip of the Week
P•A•S ASSOCIATES
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How to Pay Employee Who Hasn't Completed Tax Withholding Forms

If an employee quits after working only a day or two, and before completing a W-4 tax withholding form, can we just pay him as an independent contractor? If not, can we tell him we will hold off on cutting him a final paycheck until he completes his W-4 so we know how much to withhold in payroll taxes?

An independent contractor relationship is not created simply because an employee works for a short duration and then quits. Your employee cannot be paid as an independent contractor in this situation, and you must prepare his final paycheck within the legally required timeframe even without a completed Form W-4 specifying tax withholding status and allowances.

No Exception to Deadlines

Even though your employee did not complete the Form W-4, California's final paycheck deadline laws still will apply. Delaying the final paycheck until the employee completes the Form W-4 may result in a violation of California's Labor Code Section 202.

Since the employee quit without notice, Labor Code Section 202 requires that you cut a final paycheck for all hours worked within 72 hours of the employee quitting, and have it available for the employee to come in and pick up. There is no legal obligation to mail the check unless the employee specifically requests that it be mailed and provides a current mailing address.

Note that if your company policy allows employees to begin accruing vacation from the first day of work, there may be a small amount of vacation wages due as well.

Final Paycheck Tax Withholding

If an employee quits or is terminated before completing a Form W-4, you may follow the guidance from both the Internal Revenue Service and the Employment Development Department for federal and state tax withholding in this situation.

Both agencies specify that if a new employee does not give you a completed Form W-4, withhold tax as if he or she is single with no withholding allowances. Exceptions apply for withholding on wages paid to nonresident aliens.

Contact your tax adviser for further guidance regarding tax withholding concerns.

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