

WHAT CONSTITUTES JOB ABANDONMENT?

Q: One of our employees hasn't shown up for work in the last couple of days. Is this considered "job abandonment?" Will the employee be eligible for unemployment benefits? What is the final paycheck rule in this case?

A: There is no official definition of "job abandonment" under Oregon's wage & hour laws. However, you may want to consider defining this term in your company policy. For example, your policy might state that you will consider your employee to have voluntarily resigned after three consecutive "no call, no shows", unless there are extenuating circumstances. Why include the part about "extenuating circumstances?" It's always possible that the absence is related to a medical condition or some other situation that may prevent the employee from immediately contacting you. While the employee has the responsibility to let you know what's going on, it's a good practice for the employer to attempt to contact the employee.

Be sure to document your efforts to reach the employee. If nothing else, you are showing that you have made a good faith effort and can feel comfortable applying your policy.

If you decide after a certain number of absences that the employee has "abandoned" the job under your policy, there is still the question of what to do with the final paycheck. Even if you characterize the unexcused absence as a "voluntary quit," the employee in this scenario hasn't stated that he or she is resigning. Rather, you're applying your policy to determine that the employee has separated from employment and is no longer welcome to return. For this reason, it is safer to pay the employee's final paycheck within the required time frame for "terminations." That means you should have the employee's final paycheck available by the end of the next business day following the termination. (A different rule applies when an employee resigns without giving 48 hours advance notice. In that situation, you must have the paycheck available within five working days or at the next regular payday, whichever is sooner.)

If possible, you should promptly notify the employee of your discharge decision and advise that the final paycheck is available. You're required to mail the final wages to any address designated by the employee if the employee requests that. Otherwise, you should hold the paycheck so that it's available to the employee by the end of the next business day following the termination, since the law says that final wages are "due and payable" no later than this deadline.

All of this doesn't necessarily mean, for purposes of unemployment rules, that you have terminated the employee or that the employee will be eligible for benefits. The Oregon Employment Department will make this determination under its own standards.

For more information on these and other important issues affecting employers, visit our website at www.oregon.gov/boli/TA. **Be sure to mark your calendar for BOLI's 23rd Annual Employment Law Conference December 5-6.**