

DECEASED ESTATES

What can an employer do for employees affected by the death of one of their colleagues?

It is understandable that your employees may suffer some emotional stress at the passing of one of their colleagues. In some instances this may even reduce productivity and morale within the workplace. So what can you, as an employer, do to help?

One of the key strategies you could implement is an Employee Assistance Program (EAP). An EAP is a counselling service that can be offered through a third party administrator, health insurer or ancillary insurer. EAP programs assist employees to work through problems or issues that affect their professional and personal lives (such as the death of a friend and colleague).

EAPs can provide a variety of means, including face-to-face meetings with professional counsellors, counselling sessions via telephone, and access to online tools with educational materials and programs to help individuals through hard times.

Even though your company or business may be paying for the EAP, confidentiality is still necessary. As an employer you will not necessarily know the identity of the employees seeking assistance, nor will you be aware of the specifics of their discussions with the counsellors. However, by offering the EAP you can benefit in many ways, including increased productivity, improved workplace morale and reduced absenteeism.

What can an employer do for the family of the deceased?

A courteous action upon the death of an employee is for an employer to send a letter of condolence to the employee's family. The letter can offer sympathy and address the valuable contributions the employee made to the organisation.

What do I do with a deceased employee's payment entitlements?

An employer, upon the death of an employee, is required to arrange the final payment of monies owed to that employee, including payment of outstanding wages, unused long service leave, unused annual leave, bonuses and other relevant monetary entitlements.

However, it is very important that employers do not automatically deposit the payment into the deceased employee's bank account and that the payment is not provided to the deceased employee's family (i.e. their spouse), even if requested to do so – such action may have consequences under the *Administration and Probate Act 1958* (Vic).

In many instances, the employee's account will be frozen upon their death and the payment will be rejected from the deceased employee's financial institution.

Employers should be aware that the employee's outstanding salary and entitlements will form part of the employee's estate and consequently needs to be dealt with via a specific process. Instructions for how an employer is required to act in this process will be provided to an employer in due course.

What is the process?

A person's will is a legal document that appoints a person (or persons) to be the personal representative of their affairs upon their death – this person is known as the *executor*. It is the executor's responsibility to tie-up the loose ends of the deceased's affairs, including the collection of the outstanding salary and entitlements from their employer.

In instances when an individual does not have a valid will, an *administrator* will be appointed to handle their affairs. An administrator acts in the same capacity as an executor.

The executor or administrator of the employee's estate will contact you in due course with instructions regarding how to pay out the money owed to that employee. Generally, the executor/administrator will request that you calculate the final sum owed to the employee and mail it to them in cheque form via registered post. However, as noted above, this should not be done until contacted by the executor or administrator.

A number of weeks have passed since my employee passed away and I still haven't heard from their executor.

Administering an estate can be a long process. It can take a substantial amount of time for the initial steps to be finalised, and for the executor or administrator to be formally appointed, and the process of finalising the employee's estate to begin.

This means that it could take some time before the employer is contacted and provided with instructions regarding where to send money owed to the deceased employee. The important thing to remember is to not deposit the money into the employee's bank account – calculate the payment amount and wait to be contacted. The executor/administrator will contact the employer and advise them of the correct process.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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