

Office of Financial Management
Indebtedness of State of Washington to Deceased Employees
Procedures on How to File Claims

Washington state law and administrative policies must be followed when requesting and paying final amounts owed to deceased employees. These procedures are written in accordance with state law and administrative policies issued by the Office of Financial Management. For administrative policies, refer to the *State Administrative and Accounting Manual (SAAM)*, Subsection 25.70.30, <http://www.ofm.wa.gov/policy/25.70.htm>. These procedures are designed to assist state payroll staff and claimants to more easily understand the detailed process and documents required.

These procedures include:

General Administrative Procedures

Appendices

- A. Court appointed executor, administrator, or personal representative
- B. Surviving spouse or domestic partner registered in the state of Washington
- C. Other related claimants – children or parents
- D. Estates \$100,000 or less

Note: All procedures require the completion of an Internal Revenue Service (IRS) Form W-9 “Request for Taxpayer Identification Number and Certification”. The fill-in form can be found at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. This information will enable state agencies to complete Form 1099-MISC as required by the IRS if the distribution to the claimant is \$600 or more in a calendar year. A copy of the completed Form 1099-MISC must be furnished to the claimant or estate by January 31 of the year following payment of the proceeds or earlier if requested. This federal reporting will be in addition to the issuance of Forms W-2 “Wage and Tax Statement” as applicable for payroll transactions.

Refer to the current IRS publication Instructions for Form 1099-MISC at:

<http://www.irs.gov/pub/irs-pdf/i1099misc.pdf> on how to complete a Form 1099-MISC.

Contact your agency’s assigned OFM accounting consultant if there are any questions regarding these procedures. You can find your agency’s accounting consultant on the OFM website at:

<http://www.ofm.wa.gov/accounting/swa/swacontactsbyagency.asp>

A. Follow the Washington State Administrative and Accounting Manual (SAAM), Subsection 25.70.30. Refer online to: <http://www.ofm.wa.gov/policy/25.70.htm>.

B. Obtain employee name and date of death.

C. Determine payroll status time of death.

Upon notice that an employee has died, the agency payroll office must be informed immediately.

If payroll distribution has already commenced as part of the normal distribution procedures, the agency would normally not be able to recall the payment. “Normal distribution” generally means manual distribution on payday at 8 am or later. For direct depositors, this would mean whenever the payroll system has forwarded the payment to the bank. Per the IRS, once an electronic payment has been transmitted to a deceased employee’s designated account, do not attempt to recall the payment. If the payment is an overpayment, contact your OFM accounting consultant at once for guidance.

D. Determine the proper tax treatment of earnings paid out after death.

The payroll office must ensure that the appropriate federal employment taxes will be taken on any payroll payment. These regulations are found in Internal Revenue Service (IRS) Publications 15 (<http://www.irs.ustreas.gov/pub/irs-pdf/p15.pdf>) and 15-A (<http://www.irs.ustreas.gov/pub/irs-pdf/p15a.pdf>).

Taxability:

Per IRS:

- Any payroll payments made to a deceased employee (in the calendar year of death as well as future calendar years) are not subject to Federal income tax withholding.
- With the exception of sick leave buyouts, all wage payments (pay, overtime, comp time, annual leave, etc.) to a deceased employee are subject to social security and Medicare taxes if payment is made in the calendar year of death (excluding payments to employees who have reached their social security maximum).
- If payment is made in the calendar year subsequent to the date of death, the payment is not subject to social security or Medicare withholding.
- The earning period being processed is not relevant – only the actual pay date.
- Sick leave buyouts made to deceased employees’ survivors are exempt from social security and Medicare taxes.

E. Review other payroll deductions for applicability before processing the final payment(s).

F. Complete the final pay action(s)

Remember to check if any amounts besides wages need to be paid, including allowances, travel, moving expense reimbursements, etc.

Payroll should be completed for the deceased employee and processed according to the regular processing calendars. Do not hold up processing because of claimant designation questions. Process the payroll in the appropriate payroll period.

Promptly record the amount owed to the employee in GL code 5145, “Due to Deceased Employees’ Estate.” Issue either a partial payment from GL 5145, depending on the circumstances, or a full payment from GL 5145 when a 100% distribution is possible. Refer to accounting procedures provided in SAAM at: <http://www.ofm.wa.gov/policy/85.34.htm>.

Remember, never cancel a payment in the payroll system just because the payment is going to be held for later distribution. Only cancel warrants/checks in the payroll system if the calculations or tax withholding was wrong.

Process a warrant or check and release it to the appropriate claimant or successor who signed the claim form and presented the required documentation as provided in SAAM Subsection 25.70.30.g.

The agency shall make the warrant or check payable to the appropriate claimant or successor.

G. Review the Appendices of this document to determine the appropriate claimant to whom the deceased employee’s final proceeds should be released. Generally, the claimant will be one of the following:

- **Court-appointed Executor, Administrator, or Personal Representative**
- **Surviving Spouse or Domestic Partner Registered in the State of Washington of the Deceased**
- **Children of the Deceased**
- **Parent Claimants**
- **Successor to Deceased per chapter 11.62 RCW**

H. For communication/distribution purposes, determine the potential claimants of money owed the deceased. Tips to locate possible claimant:

- (1) Agency staff should promptly (within reason) contact family or friends of the deceased to determine who might be the likely claimant of the deceased employee. If this is too difficult, reviewing the named beneficiaries on state life insurance or retirement designations may be of assistance. However, any such information can be used only to serve as an aid in locating possible claimants and would not indicate that those designated individuals would necessarily meet the state's disbursement rules for *payroll* amounts owed to deceased employees.
- (2) If the agency cannot locate a claimant, call the agency's assigned OFM accounting consultant for additional ideas for resources to find a possible claimant.

I. Collect documents as required depending on the method by which the amount due the deceased employee is being processed – Refer to Appendices A-D for specific directions.

Except for unusual situations, this document includes procedures to process claims for most usual categories of potential claimants.

J. Wills

State agencies are not to use wills as a basis for distribution of amounts owed to a deceased employee. The state is not authorized to determine the legality or validity of any will document that may be presented.

K. Trusts – Other Legal Directives

For advice on how to handle situations involving a trust or other legal directive, contact the agency's assigned OFM accounting consultant to determine the process to be used for these unique situations.

L. Marriage/Registered Domestic Partnership Relationships

Married v. Separated

For a surviving spouse or domestic partner to claim the amounts due the deceased, he or she must have been married or registered in the state of Washington as a domestic partner to the deceased at the time of his or her death.

Even if the deceased employee and spouse or domestic partner registered in the state of Washington were separated at the time of the deceased's death, they are still considered legally married or partnered unless the marriage or partnership is dissolved at time of death. See Appendix B.

Common Law Marriages

The state of Washington does not permit the creation of common law marriages – couples must obtain a license and the ceremony must be solemnized in order for the marriage to be valid. RCW 26.04.050. However, a common law marriage created in another state will be recognized as valid in Washington if the common law marriage was recognized as a valid marriage in the state where created. RCW 26.04.020(3). The following jurisdictions recognize common law marriages: Alabama; Colorado; District of Columbia; Georgia (if created before 1/1/97); Idaho (if created before 1/1/96); Iowa; Kansas; Montana; New Hampshire; Ohio (if created before 10/10/91); Oklahoma; Pennsylvania; Rhode Island; South Carolina; Texas; and Utah.

Domestic Partners

Domestic partners registered with the state of Washington are not same-sex marriages. Domestic partners registered with the state of Washington have many of the same rights and responsibilities as spouses, and are entitled to payment. See RCWs 26.60.010 -.030, 26.60.090, 26.26.914, and Appendix B.

Note: Effective July 22, 2011, RCW 26.60.090 authorizes a legal union of two persons of the same sex that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under state law, to be recognized as a valid domestic partnership and treated the same as a domestic partnership registered in the state of Washington regardless of whether it bears the name domestic partnership. Whenever “domestic partner” is used in this section, refer to this note for clarification.

M. Children

RCW 49.48.120 states that if there is no surviving spouse or domestic partner registered in the state of Washington of the deceased employee, then his or her child or children can claim the amounts due the deceased, up to the \$12,000 limit. A child of the deceased means a biological or legally adopted child of the deceased. It does not include step-children.

Minor and Emancipated Children

If the deceased's child or children are the proper claimants and the children are minors (not yet 18 years of age), the amounts due deceased cannot be released to them. The amounts must be released to their legal guardian on their behalf. If a child is emancipated pursuant to chapter 13.64 RCW, then the child is considered an adult and can file the claim and receive the amounts due the deceased even though he or she is not yet 18 years of age. If the child is not a resident of Washington State, look to the law in the state where the child resides to determine the requirements for emancipation.

N. Parent Relationships

If the deceased's parent(s) is the appropriate claimant, and the parents are married or registered in the state of Washington as domestic partners, then either parent/registered partner can file the claim form and receive the amounts due the deceased employee up to \$12,000. If the deceased's parents are divorced or the domestic partnership registered in the state of Washington has been dissolved, then each parent/registered partner must file a claim form and will receive half of what is owed the deceased up to \$12,000 total or \$6,000 for each parent.

O. Multiple Claimants

Issue payment(s) to all the claimants in the correct proportions, providing each has presented the complete correct set of documents. Claimants may, by written authorization, direct payment on their behalf to another appropriate claimant. Pay from the revolving fund, using GL 5145. Payroll taxes will be split evenly amongst the claimants. Remember, do not process a cancellation in the payroll system unless the pay is wrong.

P. Tribal Court Actions

If a tribal court is involved in an inheritance case and an agency is presented with a tribal court order, contact the agency's assigned OFM accounting consultant for assistance.

Q. Prepare/distribute IRS Form 1099-MISC to claimants and IRS at calendar year-end

Use current IRS forms and instructions to report the distributions of amounts for deceased employees to their beneficiaries if the total amount paid out in a calendar year is \$600 or more. The IRS forms and instructions can be found at:

Form 1099-MISC (informational copy):

<http://www.irs.gov/pub/irs-pdf/f1099msc.pdf>

Form 1099-MISC instructions:

<http://www.irs.gov/pub/irs-pdf/i1099msc.pdf>

Form 1096 (informational copy):

<http://www.irs.gov/pub/irs-pdf/f1096.pdf>

R. When Distributions Cannot be Made to Claimants

Contact the Unclaimed Property Section at the Department of Revenue to determine what information must be included before transmitting unclaimed amounts for deceased employees that remain undistributed after one year.

Appendix A

Court appointed Executor, Administrator, or Personal Representative

If an executor, administrator, or personal representative for the estate of the deceased has been appointed by a court, all amounts owed, including anything in excess of \$12,000 are payable to the deceased and transmitted as requested to the executor, administrator, or personal representative.

Documents required:

1. Certified copy of the deceased employee's death certificate
2. Copy of the court order appointing the personal representative
3. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Note:

A Claim of Indebtedness form should **not** be completed by an executor, administrator, or personal representative.

Appendix B

Surviving Spouse or State of Washington Registered Domestic Partner of the Deceased

If the court has not appointed an executor, administrator, or personal representative, then a surviving spouse or domestic partner registered in the state of Washington may seek payment under one of the following three scenarios.

1. If there is a community property agreement between the deceased and the surviving spouse or domestic partner registered in the state of Washington, then:

The agency shall process the total of the deceased's pay or that portion governed by the community property agreement to the surviving spouse or domestic partner registered in the state of Washington.

Documents required:

1. Certified copy of the deceased employee's death certificate
2. Copy of the community property agreement between the deceased employee and his or her surviving spouse or domestic partner registered in the state of Washington.
3. Certified copy of the marriage license.
4. Completed Claim for Indebtedness of state of Washington to Deceased Employees. Either the affidavit or declaration format is acceptable.
5. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

2. If no community property agreement exists, then the agency may pay up to \$12,000 once the surviving spouse or domestic partner registered in the state of Washington has completed a Claim for Indebtedness form.

Documents required:

1. Certified copy of the deceased employee's death certificate
2. Certified copy of the marriage license or Certificate of State Registered Domestic Partnership
3. Completed Claim for Indebtedness of state of Washington to Deceased Employees.
4. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Appendix B (continued)

Surviving Spouse or Domestic Partner Registered in the State of Washington of the Deceased

- 3. If no community property agreement exists, and the surviving spouse or domestic partner registered in the state of Washington has completed the Claim for Indebtedness form, but the amount owed the deceased employee is above \$12,000, the agency may not pay the amount owed the deceased employee in excess of \$12,000 unless:**
- a) **The requirements of Appendix D are followed for estates less than \$100,000;**
or
 - b) **A personal representative for the deceased employee's estate has been appointed**

Note: The state cannot use the beneficiary designations in deceased employee's wills, state insurance, or state retirement to process disbursements.

Documents required:

1. Certified copy of the deceased employee's death certificate
2. Certified copy of the marriage license or Certificate of State Registered Domestic Partnership
3. Completed Claim for Indebtedness of state of Washington to Deceased Employees
4. An IRS form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Appendix C

Other Relative Claimants – Children or Parents of the Deceased

The agency may pay the amount owed the deceased employee up to \$12,000 to the surviving child or children, or if there are no children, then to the surviving parent or parents of the deceased employee under the following circumstances:

- 1) No executor, administrator or personal representative of the estate has been appointed.
- 2) The claimant has completed a Claim for Indebtedness form.

Amounts owed to surviving children who are minors and not emancipated pursuant to chapter 13.64 RCW can only be paid to a legal guardian on the child's behalf. The legal guardian must also complete the Claim for Indebtedness form on behalf of the surviving child or children.

Documents required:

1. Certified copy of the deceased employee's death certificate
2. Completed Claim for Indebtedness of state of Washington to Deceased Employees
3. Proof of legal guardianship, if minor children are claimants
4. An IRS form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).

Appendix D

Estates \$100,000 or Under

For estates valued at \$100,000 or less, chapter 11.62 RCW allows an estate to be distributed upon the presentation of an affidavit. If the agency is presented with an affidavit meeting all the requirements of RCW 11.62.020, it shall pay the total amount owed (the \$12,000 limit does not apply) the deceased to the successor who has completed the affidavit. See SAAM 25.70.30 for the specific requirements of the affidavit. The applicable statutes are attached.

Documents required:

1. Certified copy of the deceased employee's death certificate
2. Original Affidavit (as relates to RCW 11.62.010-.020). Mail affidavit as instructed by the agency.
3. An IRS Form W-9 providing either the estate's Taxpayer Identification Number (TIN) or the individual's social security number (SSN).