**Final Pay - Severance Benefits**

1. Texas law has specific deadlines for [final pay](http://www.twc.state.tx.us/news/efte/final_pay.html), as well as limitations on what may be deducted from pay
   1. in the case of an involuntary work separation (discharge, termination, layoff, "mutual agreement", and resignation in lieu of discharge), the employer has six calendar days from the effective date of discharge to give the employee the final paycheck; if the sixth day falls on a day on which the employer is normally closed for business, the employer may wait until the next regular workday to give the employee the final check
   2. if the work separation is voluntary, i.e., the employee initiates the work separation, and continued work would have been available had the employee not chosen to give notice of resigning, or had the employee not abandoned the job, the deadline for the final paycheck falls on the next regularly scheduled payday following the date of last work; "voluntary work separation" includes resignation, retirement, walking off the job, and job abandonment
   3. "final pay" includes all components of the pay - however, if a commission or bonus policy or plan provides for payment on a specific date or at a specific interval, the plan or policy will determine when such payments must be made - such plans or policies should always be in writing for the company's own protection
2. severance/wages in lieu of notice - the employer should decide whether to pay such post-termination pay in installments or in a lump sum. Texas allows either method. Under the Texas Payday Law, [severance pay](http://www.twc.state.tx.us/news/efte/severance_pay.html) is not owed unless it is promised in a written policy. Be sure to understand the difference:
   1. Most employers designate any post-employment wages paid to ex-employees as severance pay.
   2. For purposes of unemployment compensation, however, it is important to know that such payments may not be severance at all, but rather, wages in lieu of notice.
   3. Sections 207.049(1) and (2) of the Texas Unemployment Compensation Act state that a claimant will be disqualified from receiving unemployment benefits for any benefit period in which he is receiving wages in lieu of notice or severance pay.
   4. The courts have generally defined severance pay to be a payment the employer has obligated itself to make, either verbally or in writing, which is based upon a set formula, such as length of prior service. For example, an employer may have a company policy that a terminating employee is entitled to one month's wages for every year of service. Section 207.049(2) defines "severance pay" as "dismissal or separation income paid on termination of employment in addition to the employee's usual earnings from the employer at the time of termination." The term does not include any payment made to settle a claim or lawsuit or in connection with a negotiated agreement. Thus, severance pay that is unilaterally offered (for example, in a policy or in a job offer letter) would be disqualifying, while a negotiated severance payment would not affect benefit eligibility.
   5. Wages in lieu of notice are additional wages that the employer is not obligated to pay. They are paid only because the employer has chosen to give the employee no notice of termination. The amount of wages is not necessarily based on longevity or length of service. For example, an employer may call an employee in for dismissal and offer him X number of weeks of wages to assist him during the time he is seeking new employment. No obligation + no notice = wages in lieu of notice.
   6. Anytime an employer is paying severance pay or wages in lieu of notice, that information should be provided to the Texas Workforce Commission local office on any response to an employee's claim for benefits. Keep in mind that such additional pay will not stop receipt of unemployment benefits, but payments will be delayed until the until the payment's period of coverage has expired. This can result in substantial savings to an employer because many people will have found another job by the time they are eligible for benefits.
   7. Keep in mind that if an employer has a policy or practice of making severance payments that require a continuing plan of administration, it will likely be obligated, under the federal law known as [ERISA](http://www.twc.state.tx.us/news/efte/erisa_basics.html), to treat such benefits as a "welfare benefit" and to report them along with other forms of ERISA benefits in the IRS form for ERISA, Form 5500. ERISA is a very complicated statute that affects employment taxes, benefits, and employment policies and agreements. For more information, contact a qualified ERISA attorney.
   8. Finally, remember in the case of child or spousal support orders to make the proper deduction from severance pay or wages in lieu of notice - for more information, [click here](http://www.twc.state.tx.us/news/efte/severance_pay.html).
3. Other types of post-termination payments that are neither severance pay nor wages in lieu of notice:
   1. an incentive paid to obtain a release or waiver of liability from the departing employee - this kind of payment will not affect unemployment benefits. Although there are no precedent cases on this point, such a payment should not be considered enforceable under the Texas Payday Law, because it is not severance pay and was presumably not part of the wage agreement or any other employment agreement that existed prior to termination. Rather, it should be enforceable in civil court.
   2. liquidated damages - this kind of payment would also not affect unemployment benefits. TWC recently held (in a non-precedent wage claim case) that an amount promised as liquidated damages in an employment agreement ("If such-and-such happens and you are terminated prior to \_\_\_\_\_\_\_\_\_\_\_\_, XYZ Company will pay you $\_\_\_\_ in satisfaction of any remaining obligations it may have toward you.") is an enforceable part of the wage agreement under the Texas Payday Law.