

JODI R. BOHR is of counsel at Gallagher & Kennedy PA. She practices employment and labor law, with an emphasis on litigation, class actions and human resource matters.

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Unclaimed-Property Reporting Vital

Ignoring Obligations Means Increased Penalties

BY JODI R. BOHR

More than 10 years after Arizona passed its mandatory unclaimed property reporting requirements, most employers do not realize they are obligated to report unclaimed or abandoned property.¹ This is compounded by the (fairly) recent changes to the reporting requirements, which vary based on the type of abandoned property.

Often, employers want to know, “What do we do when an employee abandons his position?” The employer must be cognizant of the fact that it must, first and foremost, comply with Arizona’s wage

statute when an employee does that.² And even if the employer complies with that statute, it is not off the hook if the check is returned in the mail or, alternatively, not cashed.

Proper reporting of unclaimed wages is more important than ever, as most states have increased enforcement of unclaimed property laws. In a period of economic decline in which a state’s revenue decreases, a state may see unclaimed property as a viable nontax revenue source it may have previously ignored. Therefore, states are conducting more unclaimed property audits as a way of bringing in additional revenue that is otherwise lacking.

What Is Unclaimed or Abandoned Property?

Unclaimed wages are easy to identify as abandoned property, but other abandoned property may be more difficult to classify. Arizona’s Unclaimed Property Act (the “Act”) enumerates both the types of property and the timeframe in which the property is presumed to be abandoned.³

Property is unclaimed or abandoned when the “holder”⁴ cannot locate the “owner.” Property that is subject to the Act includes tangible and intangible property. Some examples of unclaimed assets are⁵:

- Outstanding payroll and vendor checks
- Uncashed money orders, cashier’s



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MORE INFORMATION

For answers to questions regarding reporting obligations or other information on unclaimed property, the following may prove to be helpful:

www.azunclaimed.gov

(602) 364-0380 / 1 (877) 492-9957

Department of Revenue

Unclaimed Property Unit

P.O. Box 29026

Phoenix, AZ 85036-9026

checks, travelers checks, dividends, and other official checks

- Accounts receivable credit balances, escrow balances, customer's overpayment, unreturned or unused security deposits, and discounts due
- Property held by courts and other governmental entities
- Amounts due/payable under terms of insurance policies or annuities, including policies that provide workers' compensation, life, property, health, disability, or casualty benefits

Property is presumed abandoned if it remains unclaimed by the owner for a certain period of time, which is determined by the type of property at issue.

In November 2009, Gov. Jan Brewer signed Senate Bill 1003 into law, which amended several of the abandonment periods enumerated in A.R.S. § 44-302.⁶ Credits owed to a customer as a result of retail or business transactions are presumed abandoned three years after the obligation, rather than the former abandonment period of five years. The abandonment period for "all other property" not enumerated in the statute was reduced from five years to three years. Wages or other compensation for personal services is presumed abandoned one year after the compensation becomes payable to the owner.⁷ Property is deemed abandoned if, for the applicable time period outlined in A.R.S. § 44-302(A), the owner has not communicated in writing with the holder or communicated by other means reflected in a contemporaneous record that is prepared by or on behalf of the holder.

Required Steps for Compliance

So what should employers do when an employee's check is returned to the employer or the employee does not cash his paycheck? Before reporting the property as abandoned, an employer or holder of unpaid wages or other abandoned property first must reasonably attempt to deposit the property with its rightful owner through a process of due diligence. Often, this due diligence must be conducted at least 120 days prior to filing the November report.

In an ideal world, the employer will have

adopted policies and procedures that comply with the Act before facing this situation. The policies and procedures—or steps to be followed in the event of unclaimed paychecks—include:

- Attempt contact with the former employee to discuss the unclaimed paycheck(s) that were not cashed. If contact is made, try to determine if the check has been lost or the former employee simply set it aside and forgot to cash it. Hopefully, the resolution will be as easy as reissuing the check.
- Document any contact or attempted contact with the former employee related to the unclaimed wages. If contact is not made, documentation may be as simple as noting the date, time and form/method of attempted contact. This can be used to show that the former employee could not be located by the employer. If contact is made, in addition to the other factors, summarize the employer's discussion with the former employee about its efforts to have the former employee collect his wages.
- If telephonic contact is not made, a written notice should be sent to the former employee's last known address(es) via certified mail or another method that provides the employer with a record of the communication attempt. Email, with a delivery receipt, may also be used as a method of written communication. The written communication should explain that his paycheck or other property has gone unclaimed and request a response by a certain date regarding the property.

Prior to 120 days before the holder (employer) of property that is presumed abandoned files a report with the state, the holder must send a written notice to the owner (former employee) if all of the following apply⁸:

- The employer has an address for the former employee and the employer's

records do not indicate that the address is inaccurate.

- The claim of the owner is not barred by any other law of this state.
- The value of the property is at least \$50.

To ensure statutory compliance, a diligent employer will calendar reminders for January and June of each year to attempt written communication with the owner of abandoned property.

Reporting Abandoned Property to the State

Once the property is determined to be "abandoned," the holder has an obligation to transfer the property to the Arizona Department of Revenue's Unclaimed Property Unit (the "Department") if the property is subject to the custody of the State of Arizona.⁹

A holder of property that is presumed abandoned shall make a report to the Department concerning the property being transferred to the custody of the Department.¹⁰ The report shall be verified and contain:

- The description of the property;
- The name of owner (if known), last known address (if any) and the Social Security number or taxpayer identification number (if readily ascertainable);
- The date, if any, on which the property became payable, demandable or returnable and the date of the last transaction with the owner of the property; and
- Other information that the



Department by rule deems necessary, depending on the type of abandoned property.

The holder shall file its report with the Department before November 1, and the report shall cover the last 12 months before July 1 of that year.¹¹ Upon filing its report, the holder shall pay or deliver to the Department the property described in the report. Once the holder pays or delivers the property to the Department in good faith, the holder is relieved of all liability related to the property that arises after payment or delivery.

Pursuant to A.R.S. § 44-307(F), the holder may request an extension of the deadline for filing a report before the report is due. Upon demonstration of good cause, the Department may grant the extension. If the extension is granted, a holder may make an interim payment to the Department on the amount estimated by the holder to be ultimately due. This payment will terminate the accrual of additional interest on the amount paid.

Consequences for Failure to Report

Companies often do not understand the unclaimed property reporting requirements, or they choose to ignore them. They then find themselves the subject of an audit and penalties. The Department

may audit records of a company to determine compliance even if a company believes that it is not in possession of any property that must be reported, paid or delivered. If an audit results in disclosure of property that should have been reported, the Department may assess the cost of the audit against the company at the rate of


At the very least, a company should consider preparing a report for internal records to ensure that it is mindful of reporting requirements.

\$100 per day for each examiner; however, the assessment shall not exceed the value of the property found to be reportable.

A company that fails to pay or deliver property within the required timeframe may be required to pay the Department interest at the rate of 1.5 percent per month or fraction of a month on the property or value of the property from the date the property should have been delivered or paid. The Department shall assess a civil penalty of 25 percent of the value of the

property for willful failure to pay or deliver property that should have been delivered or paid. Willful failure to file the report may result in a civil penalty of \$100 each day the report is withheld, up to a maximum of \$5,000.¹²

A holder that is required to file a report for unclaimed property shall maintain the records necessary to complete the report for five years after the holder files the report. Although a company is not required to file a “Negative Report of Unclaimed Property” with the Department when it has nothing to report, it is strongly encouraged. Filing a negative report demonstrates that the company is mindful of its reporting obligations and is fulfilling its obligations with the Department. At the very least, a company should consider preparing the report for internal records to ensure that it is mindful of abandoned property reporting requirements.

Arizona’s Unclaimed Property Unit provides guidance on how to follow Arizona’s Unclaimed Property Act (see box on page 24). But employers still may benefit from the assistance of an attorney in determining whether it is necessary to file a report with the Department. If a company has been out of compliance, it might decide to retain counsel to assist in notifying the Department of steps being taken to come into compliance and reduce the possible interest and penalties assessed. 

endnotes

1. First enacted in 1954, Arizona’s Unclaimed Property Act was revised more than 10 years ago to establish a mandatory reporting requirement and is codified at A.R.S. § 44-301 *et. seq.*
2. Arizona’s wage statute, A.R.S. § 23-353(B), provides that when an employee quits his position, he shall be paid “no later than the next regular pay-day for the pay period during which the termination occurred.”
3. See A.R.S. § 44-302.
4. Pursuant to A.R.S. § 44-301(8), a “holder” is “a per-

- son who is obligated to hold for the account of or deliver or pay to the owner property that is subject to this chapter.” An “owner” is “a person who has legal or equitable interest in property that it subject to this chapter or the person’s legal representative.”
5. See www.azunclaimed.gov/resourcecenter/AboutUnclaimedProperty.html or A.R.S. § 44-301(15).
6. The amendments to the abandonment periods for traveler’s checks and stocks were reverted to their original timeframe because the amendment placed

- an undue burden on holders.
7. For an exhaustive list, refer to A.R.S. § 44-302(A) or www.azunclaimed.gov/holders/pdf/ReportingCodes/NAUPAPROPERTYCODES.pdf.
8. A.R.S. § 44-307(E).
9. Abandoned property is subject to the custody of Arizona if the last known address of the owner is in Arizona, the last known address of the owner is in a state that does not provide for the custodial taking of abandoned property (and the holder is in Arizona), or the last known address of the owner is a foreign nation (and

- the holder is in Arizona). For an exhaustive list, refer to A.R.S. § 44-304.
10. See A.R.S. § 44-307(A). The description requirement does not apply to traveler’s checks or money orders.
11. For example, a report filed on November 1, 2013, must include property abandoned between July 2012 and July 2013. A life insurance company that is the holder of unclaimed or abandoned property, however, must file the report covering the prior year before May 1. See A.R.S. § 44-307(D).