



# American Payroll Association

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Government Relations • Washington, DC

June 19, 2013

Assembly Member Joseph D. Morelle  
926 Legislative Office Building  
Albany, NY 12248

Senator Patrick Gallivan  
947 Legislative Office Building  
Albany, NY 12247

Re: A. 6419-B and S. 4392-B

Dear Assembly Member Morelle and Senator Gallivan,

During the past couple of days, there has been a great deal of media attention given to a lawsuit filed by an employee in Pennsylvania who claims that she was forced to receive her wages on a payroll card. The employee further alleges that she and other employees were denied the ability to access their wages without incurring fees. It is too soon to determine whether the allegations in the complaint are true or not, and clearly, this is the responsibility of the courts, not us. The American Payroll Association (APA)<sup>1</sup> wanted to bring this lawsuit to your attention, however, because it underscores the importance of enacting legislation like A. 6419-B and S. 4392-B.

Like Pennsylvania, New York has failed to expressly address payroll cards in its statutes and regulations. This has led many APA members, and we are sure other employers as well, to be unclear about their responsibilities under state law. A. 6419-B and S. 4392-B are necessary to provide employers with clear guidance on the use of electronic payment methods and to provide workers the protections necessary to assure that events like those alleged in the Pennsylvania lawsuit do not occur in New York. These protections are discussed below.

***Employees could not be required to use electronic payment of wages onto a payroll card, but rather would have the option to affirmatively authorize the payment of wages using electronic means.*** A. 6419 and S. 4392-B would make it abundantly clear that employees must provide voluntary written or electronic authorization before receiving their wages on a payroll card.

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<sup>1</sup> The American Payroll Association (APA) is a nonprofit professional association representing more than 20,000 individuals and their companies in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws.

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In addition, employers who offer payroll cards would be required to also give their employees the option of receiving their wages by direct deposit. Because direct deposit also would require employee authorization under the proposed legislation, employees who do not authorize either electronic method must be paid in cash or by check.

**Employees would have access to their full wages without being charged fees.** A. 6419-B and S. 4392-B would make clear that employees who elect to be paid using a payroll card must be able to access their full wages off the card at least once each pay period (or once a week if paid more frequently than weekly) without charge. Indeed, payroll cards provide employees with several options for accessing their full wages without charge. Unlike paper paychecks which normally can only be cashed at the employer's and/or employee's bank without cost, an employee can receive all of their wages in cash off of a payroll card each pay period at any bank that is a member of the payment brand (i.e., Visa, MasterCard or Discover), not just the bank that issued the card.

**Employees must be able to check their account balance without fees, thereby encouraging responsible financial behavior and the avoidance of fees.** Under A. 6419-B and S. 4392-B, employers would be required to provide their employees with a means of checking their payroll card account balance using an automated telephone system and one additional electronic means without cost irrespective of the number of inquiries made. This allows employees to budget their finances and to check their balances before making a transaction.

**Employees who are offered payroll cards must be provided numerous disclosures before selecting a payment method to ensure that they make an informed decision.** A. 6419-B and S. 4392-B would require employers who offer payroll cards to provide numerous disclosures, before the employee selects a payment option. The disclosures must include: (1) the terms and condition of the payroll card program, including a list of all fees that may be assessed by the issuer; (2) the methods available to employees to access their wages without cost; (3) the methods available to check their account balance without cost; and (4) whether third parties may assess additional fees. The proposed legislation would require that these disclosures be made in paper or printable form, and be in the language the employer normally uses to communicate employment-related policies to their employees.

The APA urges your continued support for A. 6419-B and S. 4392-B. The recent lawsuit in Pennsylvania reinforces the need for legislation that would ensure that employees are able to make informed choices and to use their payroll cards to their best advantage.

Respectfully Yours,



William Dunn, CPP  
American Payroll Association  
Senior Manager of Government Relations