



# American Payroll Association

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Government Relations • Washington, DC

February 23, 2015

## **STATEMENT IN OPPOSITION TO HOUSE BILL 1211, unless amended**

The American Payroll Association<sup>1</sup> (APA) appreciates the opportunity to submit the following statement in opposition to House Bill 1211 (HB 1211), “An act relating to fees and costs related to method of wage payment.”

The APA supports legislative initiatives that ensure employees have full and free access to their wages on payday while providing employers with clear guidance on their responsibilities under the wage and hour laws. We oppose HB 1211, as currently drafted, because it is not clear what the bill would require. The hearing testimony and House Bill Report only add to this confusion. On the one hand, they declare that the bill would simply codify the Department of Labor and Industry’s longstanding interpretation of the state wage payment statutes. On the other hand, the testimony and Report focus solely on payroll cards, which are not expressly mentioned in the bill, and appear to call for significant new restrictions most of which would not apply to any other payment method. As such, we are concerned that the bill is designed to discourage employers from offering this beneficial payment method to their workers.

Our concerns are set forth more fully below. Also, we hope to dispel some common misperceptions about payroll cards by demonstrating that:

- Employees who receive wages to a payroll card account are able to access their full net wages, to the penny, each pay period without incurring a fee. Indeed, such access is provided at tens of thousands of financial institution branch locations across the country.
- As with all payment options, employees may incur fees if they fail to take advantage of the free methods of cash access available to them.
- Federal law requires that employees be offered at least one other payment option in addition to payroll cards; and

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<sup>1</sup> The APA is a nonprofit professional association representing more than 20,000 payroll professionals 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. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

- Payroll cards carry significant consumer protections.

## **Discussion**

### **1. HB 1211 is ambiguous and provides little guidance on how to comply**

HB 1211 would require employers to offer “a” payment method that allows employees to obtain their wages “without any fees or costs for the transaction.” The bill was recently amended to require that the payment method allow employees to obtain “any part of or all” of his or her wages without any fees. Although the bill itself does not mention payroll cards, the hearing testimony and Bill Report make clear that the bill is designed to regulate fees on payroll cards. What is less clear, however, is what exactly HB 1211 would require.

The testimony and Bill Report state that HB 1211 would simply “put into law” the Department of Labor and Industries’ interpretation of the wage payment laws. The Report states:

The Department interprets the wage laws to allow a business to require employees to sign up for direct deposit if there is no cost to the employee. An employer may also pay by debit or payroll card, but if there is a fee for using the card, the employer must provide an alternative method that allows employees to obtain their wages without any fees or costs.

This is consistent with information posted on Departments website,<sup>2</sup> and with guidance that the APA has received from the Department for many years. The bill text supports this interpretation to the extent that it would require employers to offer “a” method of payment that permits access to wages without cost for “the transaction.”

At the same time, however, the hearing testimony and House Report suggest that HB 1211 may be designed to prohibit any and all fees that could ever be incurred when using a payroll card to access “any part of or all” wages, even if the employee is able to access his or her full net wages without cost and even when the employee is offered another wage payment option. The recent amendment to HB 1211 is consistent with this interpretation as is the initial bill text excluding all other mainstream payment methods (i.e., paychecks and direct deposit) from the bill’s third-party fee prohibitions.

To the extent that the intent of HB 1211 is to regulate the use of payroll cards in Washington State, it should do so expressly and in a manner that clearly puts employers (and legislators voting on the bill) on notice of what is being proposed. The APA would welcome the opportunity to work with interested legislators in drafting appropriate language. In this regard, we have attached a proposed amendment to HB 1211 to this Statement.

Finally, we wonder how employers who choose to pay wages using paper checks only would comply with the requirement that employees must be able to access “any part or all” of their wages without cost. While the bill makes clear that third-party check cashing fees would not

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<sup>2</sup> Washington Department of Labor and Industries, *Workplace Rights ... Getting Paid*, available at <http://www.lni.wa.gov/WorkplaceRights/Wages/PayReq/Wages/default.asp>.

constitute prohibited “fees or costs,” it appears that employers still would be required to provide employees with the ability to partially negotiate their paychecks.

## **2. HB 1211 would impose restrictions on payroll cards that are not imposed on any other wage payment method**

As mentioned above, the Bill Report and the sponsor’s hearing testimony only express concern for fees that may be incurred when using a payroll card. In fact, the bill text makes clear that fees imposed by third parties for cashing a paycheck are not prohibited. Thus, notwithstanding the clear language of RCW § 49.46.010(7) to the contrary,<sup>3</sup> employers would no longer be required to ensure that their employees are provided a free method of cashing their paychecks.

The bill also recognizes that employees who elect to be paid by direct deposit may be charged fees by third parties and declares that such fees are not prohibited. Presumably these include fees imposed by the financial institution holding the account, owners of ATMs and similar third parties. The same fees, charged by the same people, would be prohibited when payroll cards are used. Yet, a payroll card account is simply another account that an employee may designate for the direct deposit of wages.

Employers should not be required to assume responsibility for the discretionary banking costs of their workers simply because the workers are paid using a payroll card.<sup>4</sup> As discussed below, employees are always offered at least one other payment option and have the ability to change payment methods at any time. In addition, employees are always provided with clear notice of potential fees and how to avoid those fees when using their payroll card. Just like employees with direct deposit and employees who receive paper paychecks, employees with payroll cards may incur fees if they fail to take advantage of the free methods of cash access available to them.

## **3. Payroll cards are a valuable payment option that provide employees with full and free access to their wages and carry significant consumer protections**

***Employees are always provided a means of accessing their full net wages from their payroll card each pay period.*** The vast majority of payroll cards are branded, meaning that they bear a Visa, MasterCard, or Discover logo. These cards can be used anywhere that the payment branded is accepted. Indeed, ***employees can take their payroll cards to the teller at any financial institution that is a member of the payment brand (tens of thousands of branch locations nationwide) and receive up to their full net wages without fees at least once each pay period.*** In other words, they may use their

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<sup>3</sup> RCW § 49.46.010(7) requires that wages paid by check be “convertible into cash on demand at full face value.”

<sup>4</sup> As the California Division of Labor Standards Enforcement (“DLSE”) has explained:

By providing one free transaction, the payroll card programs effectively provide for immediate and full access to an employee’s wages in full. ***The fact that there are other options for employees to choose such as to withdraw a lesser amount does not render the use of a payroll card violative of the employee’s right to full and prompt payment of wages.*** There is a prompt means for an employee to withdraw their full wages as cash on the established payday.

DLSE Opinion Letter No. 2008.07.07 (July 7, 2008) (emphasis added).

card like a plastic paycheck, and cash out their wages each pay period without cost. Alternatively, employees may choose to safely store some funds in their payroll card account, held at a financial institution, and use their cards to make purchases and/or pay their bills in person, online or over the telephone.

This flexibility makes payroll cards a valuable option for employees without bank accounts or with limited access to traditional financial services. These underserved employees often rely on expensive check cashing services to access their wages and then incur additional cost purchasing money orders to pay their bills. A 2013 study by the FDIC revealed that 4.1% of Washington households are unbanked (having no checking or savings account) and another 17.2% are underbanked (having a checking or savings account, but still reliant on alternative financial services such as check cashing services).<sup>5</sup>

***Federal law requires that employees be offered at least one additional payment option.*** The federal Electronic Fund Funds Transfer Act and its implementing regulation Regulation E, declare that no “financial institution or other person may require an employee to receive electronic fund transfers of wages into an account at a particular institution.”<sup>6</sup> The Consumer Financial Protection Bureau interprets these provisions to mean that an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the financial institution that will receive the deposit.<sup>7</sup> Alternatively, an employer may give employees the choice of having their wages deposited at a financial institution designated by the employer or receiving their wages by another means. Because payroll cards involve the electronic transfer of wages to a financial institution designated by the employer, employees must be provided at least one other payment option.<sup>8</sup> State law determines other permissible payment methods and the conditions under which they may be offered.

***Regulation E also requires that payroll cards carry significant consumer protections.***<sup>9</sup> Regulation E requires that employees be provided with the terms and conditions of their payroll card account, including potential fees, before any payments are made to the account. In addition, the financial institution that issues the card and holds the account must make account information and transaction histories available to employees on an ongoing basis. Regulation E also limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time, and requires that dispute resolution procedures be available to cardholders.

The payment brands offer additional protections and benefits to cardholders. In fact, all of the benefits offered on debit products by the major payment brands also are available on their payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs. In addition, Visa and MasterCard now require that all payroll card accounts be insured by the FDIC or National Credit Union Share Insurance Fund (NCUSIF) to protect employees in the event of financial institution insolvency.

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<sup>5</sup>2013 FDIC National Survey of Unbanked and Underbanked Households, available at <https://www.fdic.gov/householdsurvey/2013appendix.pdf>.

<sup>6</sup> 15 USC § 1693k; 12 CFR § 1005.10(e).

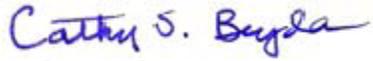
<sup>7</sup> CFPB Bulletin 2013-10 (September 12, 2013).

<sup>8</sup> *Id.*

<sup>9</sup> 12 C.F.R. § 1005.9, 1005.18.

## **Conclusion**

For the above reasons, the APA opposes HB 1211 unless amended. We would welcome the opportunity to discuss the above issues with you further. In this regard, please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (650-320-1824).



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**Washington House Bill 1211**  
**Proposed Revision**

(b) An employer must offer a method of wage payment that allows an employee to obtain ~~any part of or~~ all of his or her wages in legal tender of the United States without any fees or costs for the transaction. The following are not fees or costs under this subsection:

- (i) A check-check cashing fee imposed by a person or entity other than the employer;
- (ii) A fee or cost imposed by a person or entity other than the employer, or other than a person or entity engaged by the employer, for purposes of direct deposit of wages in an institution of the employee's choosing and at the employee's request.

(c) Nothing in subsection 2(b) of this section shall be construed as prohibiting an employer from crediting an employee's wages to a payroll card account provided:

- (i) The employee has been offered at least one other method of receiving wages.
- (ii) The employee is able to make at least one withdrawal from the payroll card account in each pay period without charge for any amount up to and including the full amount of the employee's net wages for that pay period except as provided in subsection 2(c)(iii).
- (iii) If the employee's wages are paid more frequently than weekly, the employee must be able to make at least one withdrawal from the payroll card account each week without charge for any amount up to and including the full amount of the employee's net wages for that pay period.

(d) "Payroll card account" means an account that is directly or indirectly established through an employer to which transfers of the employee's wages, salary or other compensation are made, and which carries the consumer protections that apply to payroll card accounts under the Electronic Fund Transfer Act, 15 U.S.C. §1693 *et. seq.*, and Regulation E, 29 C.F.R. Part 1005, as may be amended.