



American Payroll Association

Government Relations • Washington, DC

March 16, 2015

STATEMENT IN OPPOSITION TO SUBSTITUTE HOUSE BILL 1211, unless amended

The American Payroll Association¹ (APA) appreciates the opportunity to submit the following statement in opposition to Substitute House Bill 1211 (Substitute HB 1211), “An act relating to fees and costs related to method of wage payment.”

The APA opposes Substitute HB 1211, as currently drafted, as it would impose burdensome requirements on payroll cards that are not imposed on any other methods of wage payment. Specifically, the bill would require employers that offer payroll cards to reintroduce inefficient paper paychecks into their payroll systems and to provide free discretionary banking services to employees who choose to receive wages on a payroll card. At the same time, Substitute HB 1211 would make clear that employers are not required to provide employees with a means of cashing paychecks without incurring third-party fees. The APA, therefore, is concerned that Substitute HB 1211 would discourage the use of payroll cards while making it more likely that employees without access to free banking services will need to rely on expensive check cashing businesses.

Substitute HB 1211 Would Deviate From Existing Policy and Require Employers to Reintroduce Inefficient Paper Paychecks Into Their Payroll Systems

The Department of Labor and Industries has consistently taken the position that employers may require electronic payment methods so long as there is no cost to employees.² Washington State, therefore, is in good company with half of the states across the nation that allow employers to offer their employees the choice between direct deposit and a payroll card, without also offering a paper paycheck option. The State of Washington recognizes that electronic payment methods are far safer, more secure, and less expensive than paper paychecks. In addition to allowing private sector employers to implement purely electronic wage payment

¹ 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.

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

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programs, the State has statutorily authorized institutions of higher education and certain other state employers to offer their employees a choice between direct deposit and payroll cards.³

Notwithstanding the undeniable benefits of electronic wage payment, a recent amendment to HB 1211 would require employers that offer payroll cards to also offer at least one other payment method “that does not require the employee to maintain or open an account for direct deposit.” In other words, employers would now need to issue paper paychecks or pay wages in cash. This would impose a significant burden on employers who have relied on the Department’s longstanding administrative policy. A few of these burdens would include the time and expense of processing, printing, and delivering paper paychecks; managing issues related to lost and stolen paychecks; the cost of voiding and reissuing lost and stolen paychecks;⁴ and administering the escheat process for unclaimed checks. These and similar processes would be costly, both initially and on an ongoing basis.

The amendment makes no sense. ***Employers would still be allowed to require direct deposit, but could not offer the choice between direct deposit and payroll cards without also offering a paper paycheck.*** Employers wishing to enjoy the benefits of electronic wage payment will simply stop offering payroll cards, leaving employees without bank accounts or with limited access to traditional banking services with few options. Some employees are likely to purchase general purpose reloadable (GPR) prepaid cards from a retail outlet and to sign up for direct deposit using their cards. The terms and consumer protections on GPR cards often are not as favorable as those on payroll cards (e.g., GPR cards commonly do not provide free and clear access). However, these employees will gain the benefit of electronic payments to meet their immediate needs. The employer will most likely be unaware that it is depositing wages to a store-bought prepaid card rather than a traditional bank account because the employee will simply enroll in direct deposit using the account number and routing number associated with the card.

Substitute HB 1211 Would Expressly Authorize Fees to Cash Paychecks

While discouraging the use of payroll cards, Substitute HB 1211 would lessen the employee protections on paper paychecks. Washington law currently requires that paychecks be “convertible into cash on demand at full face value.”⁵ If enacted, Substitute HB 1211 would declare that third-party check cashing fees are not considered “fees or costs” to obtain wages and, therefore, are not prohibited. In other words, it would appear that employers would not be required to ensure that their employees have a means of cashing their paychecks without cost.

A surprisingly large number of employees in Washington have little or no access to free banking services and, therefore, may not have a way of cashing their paychecks without fees. A 2013

³ RCW § 41.04.240(2).

⁴ A 2005 study by the Comptroller of the Currency (OCC) found that it costs employers an average of \$8 to \$10 to replace a single paycheck. The OCC estimated that as many as four million paychecks are lost or stolen each year, costing U.S. businesses approximately \$48 million a year. Comptroller of the Currency, *Payroll Cards: An Innovative Product for Reaching the Unbanked and Underbanked*, (June 2005).

⁵ RCW § 49.46.010(7); State of Washington, Department of Labor and Industries, Administrative Policy ES.A.2 (Issued 7, 15, 2014).

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).⁶ These underserved employees often rely on expensive check cashing services to access their wages and then incur additional cost by purchasing money orders to pay their bills. It is important to note that Washington law does not place any limit on the amount of fees a check cashing service may charge to cash a paycheck.⁷ Studies have shown that low-wage earners nationally can spend hundreds of dollars a year on check cashing services alone.⁸

Payroll Cards Provide Workers' With Access to Their Full Net Wages Without Cost

Employees who receive their wages on a payroll card are always provided a means of accessing their full net wages from their payroll card without cost (e.g., free and clear access). 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 brand 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.* This allows employees to treat their cards like plastic paychecks, 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.

Substitute HB 1211 Would Unnecessarily Encumber the Use of Payroll Cards and Deny Low-Wage Earners a Valuable Solution

Substitute HB 1211 would require that an employer offer a payment method that allows an employee to obtain “any part or all of” his or her wages without fees or cost. Although still not clear, the hearing testimony and Bill Report suggest that this language was designed to prohibit any fees that could be incurred whenever an employee uses a payroll card to access “any part of or all” of his or her wages.⁹ We respectfully request that this language be removed.

⁶2013 FDIC National Survey of Unbanked and Underbanked Households, available at <https://www.fdic.gov/householdsurvey/2013appendix.pdf>.

⁷ RCW § 31.45.010, *et seq.*

⁸ The San Francisco Office of Financial Empowerment estimates that unbanked workers spend an average of \$711 a year on check cashing fees. *See, <http://currencsf.org/>; See also, T. Sloane and P. Hewitt, Payroll Cards: 100% Electronic Payments 80% of the Time, Crossing the Market Finish Line* (Mercator Advisory Group January 2009) (finding that employees who rely on check cashing services can spend over \$1,000 each year on fees); Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail Banking Infrastructure and Its Wealth-Building Potential* (January 2008) (A low wage earner can spend as much as \$40,000 over his or her lifetime in check cashing fees).

⁹ We wonder how employers who choose to pay wages using only paper checks 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 constitute prohibited “fees or costs,” it appears that employers still would be required to provide employees with the ability to partially negotiate their paychecks.

As emphasized above, employees using payroll cards are always provided a means of accessing their full net wages in cash, without fees. However, just like employees with direct deposit, employees with payroll cards may incur fees if they fail to take advantage of the free methods of cash access available to them. 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. .

Similar requirements are not imposed on any other payment method. As discussed above, the bill makes clear that fees imposed by third parties for cashing a paycheck would not be prohibited. The bill also recognizes that employees who elect to be paid by direct deposit may incur certain third-party fees and expressly states 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 is simply another account that an employee may designate for the direct deposit of wages.

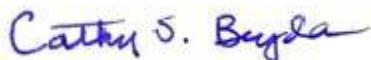
The APA's Proposed Amendment Would Address Concerns Raised About Payroll Cards

The APA has attached to this Statement a proposed amendment to Substitute HB 1211 that would address the concerns raised about payroll cards during previous hearings on the bill. Specifically, the proposed amendment would require that:

- Employees who are offered a payroll card also be offered at least one other method of wage payment;
- Employees who receive their wages on a payroll card be provided with at least one means of withdrawing their full net wages without cost. This would allow employees to treat their payroll cards like a plastic paycheck and to cash out their net wages without fees;
- Employees be notified of all their wage payment options including the terms and conditions of the payroll card option; and
- Employers only offer payroll cards that carry the consumer protections that apply to payroll cards under the federal Electronic Fund Transfer Act and Regulation E.

Conclusion

For the above reasons, the APA opposes Substitute 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 Substitute House Bill 1211
Proposed Revision

(b)(i) ~~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:~~

(A~~i~~) A check- cashing fee imposed by a person or entity other than the employer;

(B~~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.

~~(ii) An employer who credits employee wages to a payroll card account must offer an employee at least one other method of receiving wages that does not require the employee to maintain or open an account for purposes of direct deposit. However, direct deposit is permitted as the other method if the employee requests direct deposit.~~

(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.

(iv) The employee has been notified of all his or her wage payment options including the terms and conditions of the payroll card option.

(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.