



American Payroll Association

Government Relations • Washington, DC

March 7, 2007

The Honorable Senator Jack Critcher
President Pro Tempore
Chair, Senate Public Health, Welfare and Labor Committee
Room 320
State Capitol
Little Rock, AR 72201

The Honorable Senator Sue Madison
State Capitol
Little Rock, AR 72201

Via email: jcritcher@arkleg.state.ar.us
madisons@arkleg.state.ar.us

Re: SB 248 – Payment of Wages via Payroll Debit Card

Dear Senators Critcher and Madison:

We are writing *to express concerns about recent amendments to Senate Bill 248*, concerning payment of wages by payroll debit card. The American Payroll Association is a nonprofit professional association representing more than 22,000 individuals and their companies in the United States and Canada. The APA works with legislative and executive branches of all levels of government to find ways for employers to meet their requirements under law and support government objectives, while minimizing administrative burden for government, employers, and individual workers/taxpayers. To address members' interest in the use of paycards in the United States, the APA monitors their development and use with an aim toward helping educate policymakers and regulators about the benefits and uses of these cards.

SB 248 would originally have been a “win-win” for Arkansas workers and employers. It would have clarified that workers have the option to elect to receive their wages via payroll debit card (“paycard”). Instead, recent amendments adopted in committee now prohibit payment of wages by debit card:

“The wages of all All employees shall be paid in currency or by check or electronic direct deposit into the employee’s account.

(ii) Payment by debit card shall not be an authorized form of payment.”

In addition, on page 3, line 33, the term “*or debit card*” was deleted. If this provision is enacted, it would force many thousands of Arkansas workers, who voluntarily elected to receive their pay via paycard, to make other arrangements for receipt of their wages. Their options will very likely be more costly, less safe, and less convenient.

According to the Pelorus Group, an independent research firm, the number of paycards in circulation in 2006 was 7 million. This is more than a three-fold increase from the 2.2 million cards reportedly in circulation in 2004, and the number is expected to increase to 17.5 million in 2010. Paycards offer substantial benefits to workers, notably improved security and cost savings. Some of these benefits follow:

- Employees who are absent from work due to illness, travel, or even winter storms have immediate access to their pay, since they don't have to pick up a check or go to the bank or a check cashing facility.
- Paycards are particularly important as a transaction account for the hundreds of thousands of Americans who can not get a bank account because of prior banking problems.
 - Employees without bank accounts often have no alternative to check cashing stores, which charge 2% - 3%, on average, of the check's face value. The FRB estimates that about 13% of households do not have a bank account.
 - Once they cash their check, the employee is carrying up to two weeks' net pay in cash, which can be stolen or lost. Employees with paycards are protected from loss. Lost cards are easily replaced, with remaining funds transferred to a new card.
 - Paycard holders can avoid real difficulties and costs in paying bills. With paper paychecks, they typically have to buy money orders or pay in cash, in person, by traveling to the each store, utility company and so on.
 - Paycards provide new purchasing power for goods and services that require a debit or credit card, such as auto rentals, hotel reservations, utility bills and on-line purchases.
- Workers are also protected from fraudulent use by their PIN, and by federal liability limitations under Federal Regulation E. Workers can also dispute transactions in accordance with Regulation E.
- Paycards include customer service to answer questions, and provide account balances, and deposit and withdrawal history.
- Workers receive periodic paper or on-line statements detailing all credits and spending, which helps them manage their money and become comfortable with the banking system.

We understand that the recent amendment may have resulted due to a misunderstanding of the nature and function of paycards; i.e., that they might be associated with "pay day lending", or predatory lending practices involving advances of wage payments. Payroll debit cards are not credit instruments. Card holders uniformly sign agreements not to overdraft their accounts, and virtually all point-of-sale terminals and ATMs decline transactions that would overdraw an account. However, a tiny fraction of transactions, such as "off-line" paper transactions, or for very small amounts in certain circumstances, do not involve verification of available funds prior to the transaction, so it is possible to overdraft an account. In those situations, overdraft fees apply, as they should to discourage intentional overdrafts, and the funds are automatically recovered with the next paycheck. But paycards are not designed as credit instruments and do not charge interest for overdrafts. Workers who repeatedly overdraft their accounts would probably have their cards cancelled, after appropriate warnings.

Again, payroll debit cards are already in widespread use today and have resulted in no significant problems. We have enclosed background information on payroll debit cards, including excerpts of laws and regulations enacted in the various states that have explicitly

addressed the issue to date. *No state that has considered this issue made any effort to prohibit them, as the recent amendment to SB 248 would. Instead, state legislatures have enacted laws that permit paycards. **We ask that the committee amend the bill again to permit debit cards for the payment of wages.***

In addition, APA members had some other recommendations for the bill. Section 4 would amend Arkansas Code § 11-4-402 (b)(1)(C) as follows:

(C)(i) Whatever the form of payment, wages shall be payable in cash, on demand, without discount, at an established place of business in the State of Arkansas.

The term “without discount” above may effectively prohibit employers from offering paycards, since it could be read to prohibit any fees under any circumstances. Employees access their pay via paycards without incurring fees in several ways:

- Virtually all paycards offer one free ATM transaction each pay period.
- Purchases may be made at Point-of Sale terminals, with cash back (no fees apply).
- Funds may be transferred from the payroll card to any other financial account (no fees apply).
- Free convenience checks can be used to pay bills or to cash out all funds.
- Free teller withdrawals may be made at any bank that displays the card logo.
- Paycards may be used to purchase money orders (seller fees may apply).
- Paycards may be used to pay bills on-line (no fees typically apply).

However, if a card holder wishes to withdraw his or her pay via frequent ATM transactions in small increments, employers should not be made to bear the cost of the ATM fees. Payroll debit cards enable several ways in which workers can receive the full amount of their pay when due, without fees or difficulty. In practice, workers find these debit cards to be far more useful as a transaction account (versus a check or cash), and they choose for their own convenience to use the card in a variety of ways in which fees may apply. Employers should be deemed to have satisfied their obligations when they provide a debit card as a voluntary option, through which workers can receive the full amount of their pay when due, without fees or difficulty. We would recommend that this language be added:

*(C)(i) ~~Whatever the form of payment, w~~ **Wages shall be payable in cash, on demand, without discount, at an established place of business in the State of Arkansas. With respect to debit cards, employers must make available at least one free transaction per pay period and any fees must be prominently disclosed to the employee in advance and in a manner that complies with applicable law.***

The reference to applicable law above would invoke and require compliance with federal Regulation E, which includes detailed requirements for disclosure and consent of terms and conditions associated with electronic payment systems, including debit cards.

Secondly, new language was proposed that would cause significant administrative problems for all involved, without having the intended effect. Proposed § 11-4-402 (b)(1)(C)(ii) would require that:

If payment is made by check or debit card, the name and address of the established place of business in the State of Arkansas where payment is redeemable for cash shall appear on the instrument.

First and foremost, workers would not be well served by such a requirement. Printing a particular Arkansas address on a check or debit card will probably not be at all relevant to more than a handful of workers who coincidentally live or work near the address provided. It would be far more helpful and relevant to the vast majority of workers if the employer provided more comprehensive information about where checks can be cashed near the workplace. Most debit cards already reference a Web site and/or toll-free phone number on the card, to provide cardholders with the nearest locations. In addition, it is impractical to print a specific address on checks or cards. Many multistate employers issue checks from a single location. Others may use a payroll service and checks may be drawn on the payroll service provider's account.

Either way, it may be costly or even infeasible to print a specific address on checks for Arkansas workers. It also seems unlikely that any debit card would be issued with one particular Arkansas address where funds could be obtained. Debit cards can typically be used at hundreds of locations in a given area, and making reference to a particular address would defeat the purpose of the card, which is that it should be convenient and easy to use anywhere. Ultimately, we recommend that Proposed § 11-4-402 (b)(1)(C)(ii) be deleted from the bill:

~~*If payment is made by check or debit card, the name and address of the established place of business in the State of Arkansas where payment is redeemable for cash shall appear on the instrument.*~~

Finally, with regard to Section 7, Arkansas Code § 11-4-405; Payment on termination of employment, the proposed language may inadvertently create significant new administrative difficulties and expense for Arkansas employers. We do not oppose the requirement to pay final wages within three days of discharge. However, the requirement to pay final wages "in the same form of payment as the last prior wage payment" would require employers to prepare and run an unscheduled payroll, in order to produce direct deposits or to credit funds to a debit card.

Running an unscheduled payroll is a costly event, especially if only one or two workers are to receive payment. Under the proposed rule, large Arkansas employers could be required to run unscheduled payrolls quite frequently. Given the new requirement to pay within three days of terminations, employers should be allowed the flexibility to produce either an electronic payment such as a payroll card, or a manual (paper) check, which can be uploaded to the payroll system on the next regularly scheduled payroll. We ask that proposed § 11-4-405(c) be stricken from the bill:

~~*(a)(2). When an employer discharges an employee, the employer shall pay the employee his or her unpaid wages within three (3) calendar days of termination, excluding Saturday, Sunday, or legal holidays.*~~

~~*(c) Regardless of whether the termination is voluntary or involuntary, the employer shall pay the employee's unpaid wages in the same form of payment as the last prior wage payment to the employee.---*~~

Again, we thank the committee and Senator Madison for your efforts to improve the means by which Arkansas workers receive their pay. We believe that many workers would like the option to receive their pay via a paycard, and SB248 appropriately clarifies that Arkansas employers may offer this alternative. Please let us know if you have any questions.

Sincerely,

Cathy Beyda, Esq.
American Payroll Association
Chair, Paycard Subcommittee, Government Affairs Task Force


Pete Isberg
American Payroll Association
Paycard Legislative Subcommittee, Government Affairs Task Force


William Dunn, CPP
American Payroll Association
Manager of Government Relations