

Regulations Threaten New York Paycard Industry

BY WILLIAM DUNN, CPP

In September, the New York State Department of Labor (NYSDOL) issued final regulations on wage payment methods covering paper checks, direct deposit, and payroll cards. They go into effect in March 2017. The rules pertaining to payroll cards are particularly burdensome, to the degree that the APA is concerned for the very future of the payment method in New York. The regulations increase the administrative burden, and therefore the cost, of providing the cards as well as choke off revenue streams related to financial services that are not critical to the full and timely payment of wages.

In November 2015, the APA told the NYSDOL that the rule would impose burdensome and costly requirements on employers, making it less likely that they would offer, or continue to offer, payroll debit cards in New York. In June 2016, the APA conducted a survey of its membership that confirmed this concern.

Of the companies either currently offering payroll cards in New York, in the process of implementing a payroll card program, or considering offering payroll cards in New York, fewer than a third indicated they were likely, very likely, or certain to continue to offer or consider offering payroll cards if the rule was adopted.

If payroll card companies have trouble making money in New York, they may well stop offering the financial products there and seek greener pastures outside the Empire State. This is ironic for a state rolling out the motto: "New York Is Open for Business."

What's So Bad About the Regulations?

The NYSDOL has gone to some lengths to ensure that employees retain the right to receive paper checks. Again, the irony is rich considering New York City is one of the elite financial capitals of the world. The distrust the NYSDOL has for electronic payment methods seems out of place in the 21st century.

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When offering either direct deposit or payroll cards, employers must notify employees of all their options for being paid. (New York authorizes payments in cash, check, direct deposit, and payroll card.) Employees opting for electronic payments must authorize the option in writing, and they retain the right to change the method. Electronic wage payment cannot be made a condition of hire or continued employment in New York.

Payroll professionals will appreciate that an employer has two full pay periods to implement any requested change in payment method. One week is usually sufficient for APA members to implement such a change.

That's not exactly employer-friendly, but it is also not completely unreasonable. The rules get more complicated.

The notice and consent must be provided in English and in the employee's native language if the state has developed a template in that language. The NYSDOL is developing templates in Arabic, Bengali, Chinese, French, Haitian Creole, Korean, Polish, Russian, Spanish, Tagalog, and Urdu.

If an employee chooses to be paid by payroll card, the employer is prohibited from taking any action to transfer funds to the payroll card for seven days. This all but

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guarantees the employee will receive his or her next wage payment on a paper check. It is understood in the banking world that once people engage in a financial behavior, they are likely to stick with it. In fact, the behavioral concept is called “stickiness.” People who receive checks and go to the trouble to learn how to negotiate them are likely to continue that behavior. The NYSDOL seems to be nudging employees in that direction.

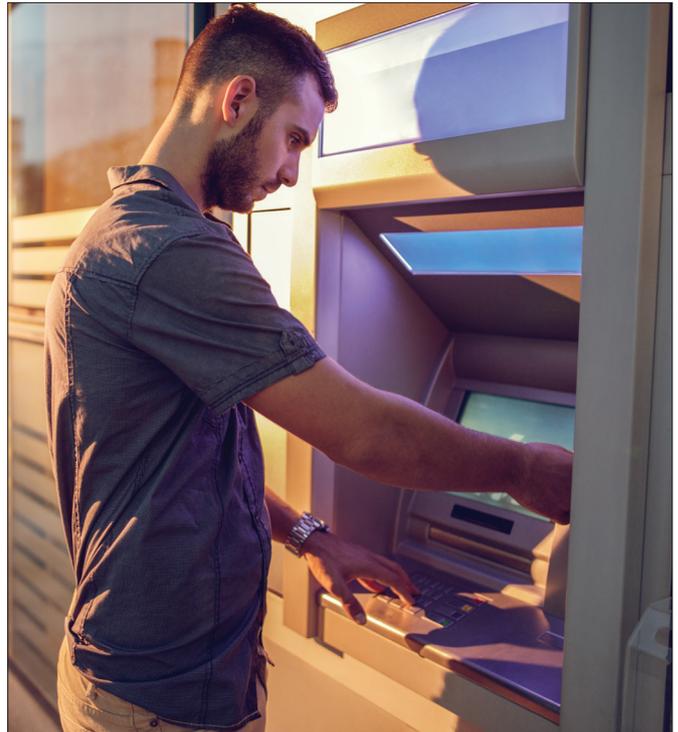
The seven-day waiting period will be particularly troublesome for employers that offer employee self-service. Survey respondents said the waiting period would require them to develop an entirely new system that identifies when an employee is establishing payment to a payroll debit card, as opposed to direct deposit, and then stop the payment when payroll is run during the seven-day period. Nearly a third of survey respondents said the provision would be so burdensome that their companies would need to seriously consider whether to offer or continue to offer payroll cards in New York.

ATM Access

An employer that manages to get a payroll card into the hands of an employee in New York also must ensure there is at least one ATM that provides unlimited free withdrawals within a reasonable travel distance from the employee’s workplace or home. There are multiple problems with this provision.

First, no other state requires free ATM access for payroll card users, and for good reason. An ATM is not necessary for a payroll card to function. Furthermore, because ATM withdrawals are generally limited to multiples of \$10 or \$20, ATM access serves no purpose in ensuring that an employee has access to his or her full wages every pay period, which is the primary concern of wage payment statutes. APA has consistently argued that employees should be able to withdraw their weekly wages from a payroll card account once per pay period without incurring a fee. This is analogous to paying by check and guaranteeing a method to cash the check for free. These regulations go well beyond that by requiring employers to provide free banking services to a select group of employees.

The fact this provision applies to employers should give everyone pause. The APA wrote to the NYSDOL: “The potential for civil and criminal liability under the Labor Law for minor violations outside the employer’s control creates a significant disincentive to offering payroll debit



cards.” Employers offering payroll cards will need to rely on their card providers to keep them in compliance. But as the saying goes, you can delegate authority, but you cannot delegate responsibility.

In the APA survey, nearly 40% of respondents said this requirement would cause their company to seriously consider whether they should offer or continue to offer payroll debit cards in the state. Another 12% said, flat out, their company would stop offering payroll cards in New York if this provision was adopted. Well, it was.

The rules go into effect in March. With both employers and card providers seriously considering whether offering payroll cards in New York is worth the burden of compliance, the situation does not look promising. It’s a shame because the APA believes firmly that electronic payments are vastly superior to paper checks, and payroll cards offer a valuable alternate to employees who do not want or cannot get bank accounts. One hope remaining is for the New York legislature to pass legislation addressing payroll cards and overruling the regulations. ■