

# American Payroll Association

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June 2008

## State Recognition of Payroll Debit Cards

In recent years, a new method of paying wages and other compensation to employees has emerged: Paycards.<sup>1</sup> 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.<sup>2</sup> Paycards offer significant benefits and advantages to both workers and employers, and this rapid growth is expected to continue. However, many state laws concerning payment of wages were written decades ago and do not reflect current payment technologies, raising questions as to whether paycards are a permissible method of wage payment under state law.

The American Payroll Association's Government Affairs Task Force<sup>3</sup> has studied the current regulatory environment in which paycards have been implemented and developed this guide, which explains how such cards work and why payroll card programs constitute a lawful method of wage payment. This information is intended to provide government policymakers, employers and other interested stakeholders with a comprehensive source of information concerning paycards, including:

- A general description of paycards and how they work,
- Benefits to workers and employers,
- Relevant federal and state laws and regulations that have been enacted to date,
- A discussion of how payroll cards have been implemented in states that have not taken action to expressly permit Paycards, and,
- Common misconceptions regarding the use of paycards.

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<sup>1</sup> These stored-value cards are known by a variety of other names, including payroll cards, payroll debit cards, and debit cards.

<sup>2</sup> *Payment Cards and the Unbanked: Prospects and Challenges*, Federal Reserve Bank of Philadelphia, July 2005.

<sup>3</sup> The American Payroll Association is a nonprofit professional association representing over 24,000 companies and individuals in the United States and Canada. The APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with federal, state, and local laws pertaining to wage payment, employment tax withholding, and information reporting. The APA's secondary mission is to work 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.

Some information in this guide is drawn from the APA's *Guide to Successful Direct Deposit* (2008 ed.), and the APA's *Guide to State Payroll Laws* (2008 ed.).

## **I. The Emergence of Paycard Programs**

In recent years, prepaid debit cards have been rapidly adopted for payment of government benefits, including Social Security, unemployment benefits and child support; as well as other payment programs, such as tax refunds. Prepaid debit cards have been popular with cardholders due to elimination of check cashing fees, elimination of physical delivery problems (e.g., illness, travel, disaster conditions, bad weather), and reduced risk of loss. A U.S. Treasury spokesperson recently noted that nine out of ten problems with social security benefits payments are associated with paper checks; whereas debit-card accounts are protected by PIN numbers and are FDIC insured.<sup>4</sup>

For many of the same reasons, employers have adopted new payroll technologies in the form of paycards, which are aimed at bringing the benefits of electronic pay systems to employees, including many who do not have conventional bank accounts.<sup>5</sup> The paycard is a prepaid, reloadable ("stored value") debit card issued through a national or regional bank that takes the place of paper paychecks. Paycards may also be referred to as payroll cards, payroll debit cards, electronic paycards, or simply debit cards. Paycards can be branded with the Visa, MasterCard or similar network marks or with the ATM and point of sale (POS) debit network marks, such as Interlink, Star, Pulse, NYCE, Cirrus, Maestro or Plus. Paycards that carry the Visa or MasterCard brand are "signature" debit cards because they can be used to purchase goods and services by signing for the purchase, the same way credit card purchases are made. These branded cards can also be used for PIN based transactions, such as ATM withdrawals. Other paycards are "PIN Only" debit cards because they require entry of a personal identification number to authenticate each transaction. *PIN Only paycards cannot be used for signature purchases.*

Each payday, the paycard is electronically loaded with the full amount of the employee's net pay. The employer continues to provide the employee with the same written statement of earnings and deductions that workers with paper paychecks or direct deposit receive..

Using paycards, employees can access their pay in numerous ways, which vary according to the features offered by the program provider. All paycards offer ATM withdrawals and PIN POS transactions. Paycards also provide for a "cash back" feature as part of the POS transaction. The amount of cash an employee can obtain will depend on the individual merchant's policy. In addition to ATM withdrawals and POS use, paycard programs may offer one or more of a variety of other withdrawal features, including:

- The ability to transfer money from the payroll card to a standard bank account,
- Convenience checks that can be used for bill payment or to cash out all funds,

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<sup>4</sup> Treasury Plans Social Security Debit Card, Wall Street Journal, January 4, 2008; Page A4

<sup>5</sup> The Office of the Comptroller of the Currency estimates that there are roughly 10 million unbanked households in the United States. <http://www.occ.treas.gov/cdd/payrollcards.pdf>

- The ability to cash out the card balance at any bank issuing the same brand of cards,<sup>6</sup>
- Funds access through third-party self-service kiosks,
- The purchase of money orders, and
- The ability to pay bills on-line.

Paycard providers typically offer one free ATM transaction each pay period in order to allow employees the ability to obtain their net pay without incurring any fees. Gaining access to all pay can be a challenge as ATMs do not issue denominations of less than \$10. As a result, employees normally cannot access all of their pay through an ATM withdrawal. Paycard providers have solved this issue with certain of the other withdrawal features identified above – namely, convenience checks that can be made out for the entire net pay amount and cashed, bank teller cash out of the entire card balance, cash back at point-of-sale terminals, access to the entire balance on the card through a self-service kiosk, or free purchase of a money order for the entire net pay.

Employees can withdraw their entire net pay from the paycard in one of the ways identified above, or they can deposit the amount into their checking and/or saving account, at least once every pay period at no cost. If the employee chooses not to withdraw the entire amount of his or her wages on the first withdrawal, the employee may incur fees for withdrawals on the remaining balance.

Employees who are considering using a paycard are provided with abundant written materials that explain the paycard, the various ways in which it can be utilized, all of the fees, and the cardholder's rights and obligations with respect to the card. The information provided is often more extensive than required under federal law, which provides that cardholders be supplied with certain information concerning various aspects of the stored value card product.<sup>7</sup> Accordingly, when an employee enrolls to be paid through a paycard, the employee is fully informed about the paycard and any potential fees.

Paycard providers offer customer service to employees to answer questions about their cards. Most paycard providers offer a toll free telephone number that accesses an interactive voice response system to provide basic information such as account balance, deposit history, and recent withdrawals. Customer service representatives may also be contacted through a toll-free telephone number for additional assistance. On-line Internet access to more extensive card account information is available with most paycards.

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<sup>6</sup> For example, any bank that issues Visa cards is required by Visa to process a cash transaction with a Visa branded card with no fee.

<sup>7</sup> See, e.g., Federal Reserve Regulation E, Electronic Fund Transfers, 12 C.F.R. 205, implementing the Electronic Funds Transfer Act, P.L. 95-630 (1978), 15 U.S.C. §1693, *et. seq.* Regulation E consumer protections include: (1) initial disclosures of the terms and conditions, (2) change-in-terms notices, (3) error resolution notices, (4) mandatory receipts at electronic terminals, (5) mandatory periodic statements, and (6) procedures for resolving EFT errors. The Federal Reserve Service recently issued an Interim Final Rule providing that effective July 1, 2007, Regulation E applies to "payroll card accounts" established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary or other compensation are made on a recurring basis. As an alternative to the required periodic statements, the Interim Final Rule allows an institution to: (1) make the balance on a paycard readily available to the consumer by telephone, (2) make available an electronic history of the cardholder's transactions for a period of at least 60 days, and (3) provide promptly upon request a written history of account transactions covering at least the prior 60 days. See, <http://www.federalreserve.gov/boarddocs/press/bcreg/2005/20051230/attachment2.pdf>

## **II. Benefits of the Paycard**

Employees who elect to receive their pay on a payroll card benefit in many ways. The payroll card offers the employee access to his or her net pay in a far safer and more secure format than a paycheck. Payroll cards provide electronic pay even if the employee does not have or cannot get a conventional bank account. Employees without bank accounts, who are likely to be the principal users of the card, currently incur high fees, averaging 2% - 3% of the check's face value<sup>8</sup> for cashing payroll checks. According to a recent article, "full-time workers without a checking account typically pay \$40 on average to cash their paychecks."<sup>9</sup> Once the check is processed, the employee is left holding the net pay entirely in cash, which, in addition to presenting a risk of theft or loss, makes it difficult or expensive for the employee to pay bills. To pay bills, the worker may purchase money orders, incurring a fee for each money order, or pay in cash, by traveling to the locations of different vendors, which is inconvenient and costly. Some companies have begun assessing a fee for payment in cash.

Paycards represent a particularly important benefit and alternative transaction account for the hundreds of thousands of Americans<sup>10</sup> who can not get a conventional bank account because of prior banking problems. The periodic paper or on-line statements associated with paycards, which detail all credits and spending, also help workers manage their finances and become comfortable with the banking system.

In fact, a Federal Reserve Bank of Philadelphia study concluded that, for consumers without bank accounts, paycards are the most cost-effective transaction accounts available.<sup>11</sup> Paycards were found to be less expensive than checking accounts, less expensive than general spending stored-value cards, and less than one-fifth the cost of check-cashing services.

Non-signature paycards are protected by a personal identification number (PIN), which can be personally selected by the employee. Employees will not suffer loss or theft of large amounts of cash. If a paycard is lost or stolen, the employee can have his balance moved to a new card immediately, unlike the delay associated with obtaining a replacement paycheck. With PIN-based cards, employees have little risk of fraudulent use. For signature cards, cardholders are protected by Visa and MasterCard's zero-liability requirements. Additionally, federal liability limitations protection will shield employees from losses arising from fraudulent use. Moreover, employees will be able to dispute debits to their paycard accounts in accordance with federal regulations applicable to debit cards (Federal Reserve Regulation E). Payroll debit cards do not contain any sensitive information such as address, SSN, date of birth, phone number, employer, or any transaction history.

No matter where they are on pay day, employees will have immediate access to their pay, since their net pay is added to the card electronically each pay period, eliminating the need to go to the workplace and to a bank. Employees who are absent from work for such reasons as illness

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<sup>8</sup> Wall Street Journal, page C3, July 6, 2006

<sup>9</sup> Wall Street Journal, page A17, January 24, 2008

<sup>10</sup> National Community Reinvestment Coalition, *ChexSystems: Disenfranchisement or Risk Management Tool?* 2001 <http://www.ncrc.org>

<sup>11</sup> Federal Reserve Bank of Philadelphia: The Cost Effectiveness of Stored-Value Products for Unbanked Consumers, May 2005.

or business travel benefit significantly. A critical benefit of electronic payment via paycards arises in the event of natural disasters, which can prevent employers from delivering payroll checks to workers, as occurred during and after Hurricane Katrina. In such emergencies employees often desperately need access to their pay. Those who elect to accept a paycard will have uninterrupted access to their pay wherever they may be for the duration of any displacement or business closure.

Finally, an added benefit of the paycard is the employee's ability to use the available balance to make purchases at any of the millions of merchants worldwide participating in the debit card networks. This is a very valuable benefit for individuals who do not have a bank account or other credit or debit card, who are presently precluded from participating in electronic commerce. Signature debit payroll cards 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. An employee who elects to receive the paycard is not obliged to spend any net pay at a retail merchant, however. The full amount is convertible to cash at the employee's election.

### **III. Paycards Are a Lawful Method of Wage Payment**

#### **A. Current State Law Treatment of Paycards**

The wage payment statutes in most states identify the methods of wage payment that are permitted under that state's law. At the time that most of these statutes were enacted, however, payment through a stored value card was not envisioned. In the past few years, several states have responded to the new technology by revising their wage payment statutes and regulations to expressly authorize this form of wage payment. These states include Colorado, Delaware, Kansas, Maine, Maryland, Michigan, Minnesota, Nevada, New Hampshire, North Dakota, Oklahoma Oregon, Virginia and West Virginia.<sup>12</sup> Excerpts from some of these state statutes and regulations are attached to this letter as Exhibit A.

In certain other states (e.g., NC, TX) , the agencies responsible for enforcing the state wage and hour laws have posted enforcement positions on their Web sites declaring that voluntary payment by debit card is a lawful method of wage payment under the state's current wage payment statute provided certain conditions are satisfied.

In the remaining states, the wage payment laws uniformly permit payment by cash or check, and some form of direct deposit (either voluntary or mandatory). For purposes of this analysis, the state wage payment statutes generally fall into the following four categories: (1) statutes that permit payment by cash, check and direct deposit only; (2) statutes that allow the employer and employee to agree to other forms of wage payment; (3) statutes that permit payment by "other acknowledgements of indebtedness"; and (4) statutes that do not regulate the method of wage payment. The APA believes that voluntary paycard programs comply with all state statutes in each of the above categories.

#### **B. States That Treat Payment by Paycards as a Form of Direct Deposit.**

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<sup>12</sup> Code of Del. Regs. 65-400-013; 26 Me. Rev. Stat. §663(d); Md. Lab. & Empl. 3-502; Mich. Compl. Laws § 408.476(3); Minn. Stat. § 177.25; 608 NAC §135(2); N.D. Cent. Code 34-14-02;. Va. Code §40.1-29(B).

Direct deposit is permissible in all states, so long as participation is voluntary.<sup>13</sup> The paycard is electronic payment just like direct deposit, and, therefore, is a permissible method of wage payment. The only potential difference is the type of account for the electronic payment. With direct deposit, the electronic payment is typically to a demand deposit account established at a bank. With paycards, the card-issuing bank may establish an electronic account with a specific bank account number for each employee who agrees to be paid through the payroll card.<sup>14</sup> Or, the paycard may be linked to a subaccount of a pooled account established at the bank. Each payday, the stored value of the paycard is increased by the amount of the employee's net pay.

State wage payment statutes often require that any direct deposit of an employee's wages be to a financial institution of the employee's choice. This requirement, no doubt, is derived from Federal Reserve Board Regulation E, which provides in pertinent part:

No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment.<sup>15</sup>

Thus, in the past, some people have argued that payment by payroll card is not a permissible method of direct deposit because the employee does not select the financial institution. The Federal Reserve Board recently issued a rule declaring that, for purposes of Regulation E, an "account" includes:

A "payroll card account" which is an account that is directly or indirectly established through an employer and to which electronic fund transfers or the consumer's wages, salary or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person.<sup>16</sup>

Importantly, in its commentary to the rule the Federal Reserve Board also specifically addressed the practice of requiring an employee either to establish a direct deposit account at a financial institution of the employee's choice **or** to receive payment by payroll card. Thus, for employers that offer direct deposit to their employees, the payroll card simply represents another choice of financial institution into which the employees' net pay can be deposited.

### **C. States Where Employees May Agree to Other Forms of Wage Payment**

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<sup>13</sup> A growing number of states are permitting **mandatory** direct deposit so long as the employee can select the financial institution. See, e.g., 26 Maine Rev. Stat. § 663(5); S.C. Code § 41-10-40(B); Tenn. Atty. Gen. Op. No. 86-94(5-8-86); Tex. Lab. Code §61.017(C).

<sup>14</sup> An electronic bank account is different from a common demand deposit account in that withdrawals from the account ordinarily are made through card transactions rather than by the issuance of written checks.

<sup>15</sup> 12 CFR Part 205.10(e)(2).

<sup>16</sup> 12 CFR Part 205.2(b)(2).

The wage payment statutes and/or regulations in Iowa, Mississippi, Nevada, North Carolina, South Dakota, Texas and Washington allow employers and their employees to agree to forms of wage payment other than cash or check. In Iowa, Nevada, and Texas, employees may authorize other forms of wage payment so long as the authorization is in writing. Clearly, the use of the paycard is permissible in these states so long as the employee and employer agree to its use. Indeed, recent regulation in Nevada, and a published enforcement position in North Carolina, confirm that this is the case.<sup>17</sup>

**D. States That Allow Payment by Other Evidence or Acknowledgement of Indebtedness**

Although the wage payment statutes in California and Florida do not expressly authorize payment by debit card, they do authorize payment by other evidence or acknowledgement of indebtedness. At the time these statutes were enacted, debit (stored value) cards were not contemplated as a cash equivalent or instrument of indebtedness. Nevertheless, these statutes were written broadly enough to include various financial instruments beyond a traditional payroll check.

Today, debit cards are universally considered and used as a valued cash substitute because of the many safeguards and features they offer. The paycard is just as much an "acknowledgement of indebtedness" as is a payroll check or draft. It is simply an electronic acknowledgement. Indeed, state agencies responsible for enforcing the wage and hour laws have taken the position that payment by debit card is permissible so long as the statutes' other requirements are satisfied (i.e., that the program is voluntary and the employee's wages are payable upon demand without discount in cash). The same should hold true in Florida or any other state that authorizes payment by "other evidence or acknowledgement of indebtedness."

**E. States Whose Wage Payment Statutes Do Not Address Authorized Instruments of Wage Payment**

The wage payment statutes in Alabama, Louisiana, Mississippi, Nebraska, and Ohio do not place any limitations on the permissible form of wage payment. Accordingly, there is nothing in these states that prohibits use of paycards. Indeed, the state enforcement agency in a majority of these states has informally advised members of the APA's Paycard Subcommittee that the voluntary payment of wages by paycard appears to be permissible under state law.

**F. Employees in All States Have the Option of Receiving Their Wages Through Traditional Means**

If participation in a paycard program is entirely voluntary, then payment by check and/or by direct deposit remains an option for all employees. Accordingly, an employee's fully informed and voluntary agreement to be paid by an alternative means should not be unlawful even if the

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<sup>17</sup> 608 Nev. Admin. Code § 135(2); North Carolina Department of Labor, Debit/Payroll Card Payment Fact Sheet, *supra.*;

alternate method includes predisclosed standard fees. Only if the employer wants to mandate electronic payment (providing the options of a paycard or direct deposit) should the employer be required to ensure that its employees can obtain 100% of their net pay without incurring any fees.

This is precisely the approach taken by states that allow employees and employers to agree to alternate forms of wage payment. Maine and Colorado, for example, specifically permit payment by debit card so long as the employee may access his or her wages without cost **or**, if payment by debit card involves a cost, the employee can choose another means of wage payment that involves no additional cost to the employee.<sup>18</sup>

#### **IV. Common Misconceptions Regarding the Use of Paycards**

##### **A. Employees' Wages Are Deposited in a Bank Account Owned by the Employer**

A common misconception regarding payment by paycard is the belief that the employees' wages are deposited into a bank account owned by the employer. This simply is not the case. An institution issuing a payroll card establishes a separate electronic account for each employee. The employer has no access to the funds that have been deposited into the account. Cardholder privacy is protected, as employers have no access to see individual cardholder transactions; e.g., transaction details showing where and how much a cardholder spends. Moreover, the employee retains the right to have his or her wages paid to any financial institution of the employee's choice where he or she maintains a standard checking or savings account; i.e., by electing direct deposit as the means of payment, or by transferring amounts credited to a paycard to a traditional bank account.

##### **B. Employees Paid by Paycard Will Incur Increased Fees**

Another misconception regarding payroll cards is that employees who receive their wages by paycard will incur increased fees. As noted above, however, employees must be able to withdraw their entire net pay from the payroll card or have the entire amount deposited into their checking or savings account, at least once every pay period **at no cost to the employee**. While an employee may voluntarily incur predisclosed ATM or other fees for some optional transactions, this is substantively similar to the traditional bank account owner having to pay charges for obtaining and writing checks and monthly account fees.

Moreover, employees without bank accounts, who are likely to be the principal users of the card, are likely to incur fewer costs than they do under traditional wage payment by check. "Unbanked employees" often cash their checks at check-cashing stores, which charge as much as 3.5% of face value in fees<sup>19</sup>. Moreover, "unbanked employees" often need to purchase money orders to pay their bills, and run the risk of losing a large amount of cash. Thus, the use of the paycard is likely to decrease the costs incurred by unbanked employees rather than increase them.

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<sup>18</sup> 26 Maine Rev. Stat. §663(5); Colorado §8-4-102.

<sup>19</sup> *Payment Cards and the Unbanked: Prospects and Challenges*, Federal Reserve Bank of Philadelphia, July 2005.



The Community Affairs Department of the Comptroller of the Currency, in its June 2005 edition of *Insights*, reported a product cost comparison based on a worker receiving two paychecks each month of \$400 each and using three money orders or checks each month to pay bills. The comparison showed total annual fees for payroll cards at \$72 per year, using a check casher to cash payroll checks at \$246.48 per year, and using a basic bank account at \$79.40 per year. To review this cost comparison in detail, go to page 11 of the June 2005 edition of *Insights*, which is available at [www.occ.treas.gov/cdd/resource.htm#insights](http://www.occ.treas.gov/cdd/resource.htm#insights).

## **VI. States Should Enact Laws to Encourage Employers to Offer Payroll Cards**

Policymakers should also recognize that, absent a regulatory environment which is conducive to employer-administered paycards, workers will still obtain and use such cards, but at substantially worse terms than had the employer negotiated an appropriate payroll card program on their behalf. Several retail organizations have recognized the public demand for reloadable prepaid debit cards, and are now widely offering such cards to the public.

Reloadable prepaid debit cards available through retail organizations offer less favorable terms than employer-based paycard programs. As one would expect, even the presumably lowest-cost alternative offered by a national discount retailer appears to cost far more than an employer-sponsored card program. The program offered by the national discount organization includes card initiation fees, monthly maintenance fees, card reloading fees, ATM withdrawal fees, account inquiry fees, teller cash transaction fees, operator assistance fees, and periodic paper statement fees, among many others.

An even worse outcome is increased reliance on check cashing stores, which aggressively promote high-interest 'pay day loans'. According to a recent article<sup>20</sup>, "the number of check cashers, payday lenders and pawnshops is more than double the number of McDonald's franchises in the United States." One has only to drive by some of these establishments to see the variety of debit card programs offered, undoubtedly under costly and adverse terms.

Additionally, policymakers may lose any ability to enact important consumer protection provisions. When an individual purchases a reloadable debit card at a retail store and uses it to receive their net pay electronically, they would merely ask their employer to set up a direct deposit for their pay into their card account. The debit card account would appear to the employer to be a conventional bank account. More importantly, any requirements established in law for the protection of workers in the context of employer-sponsored payroll card programs (such as requiring one free transaction per pay period) would not apply.

In recent years, some state bills have been proposed that would have discouraged employers from offering payroll cards to their workers. Had the bills passed, the result would have been adverse for workers in the state: Many would have continued paying high check-cashing fees and carrying large amounts of cash; and many would have resorted to purchasing prepaid debit cards through retail stores and paying higher fees

Employer-sponsored paycard programs are far more likely to have better terms and conditions, and lower costs. In addition, state laws can define appropriate requirements and conditions that apply to employers who wish to offer such cards, but only if the laws are reasonable. State laws

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<sup>20</sup> Wall St. Journal: *Beyond Payday Loans*, January 24, 2008

should encourage employers to offer this efficient, safe and cost-saving option to employees. Otherwise, employers would simply not offer pay cards as an alternative and employees will only be able to get a prepaid debit card by purchasing one at a retail or check-cashing store.

### **Conclusion**

Payment of wages through payroll cards should be encouraged as a permissible method of wage payment under state law. As the Federal Reserve's Board of Governors has shown in its recent amendment of Regulation E, paycards are simply another form of direct deposit. At a minimum, employers should be allowed to provide paycards when employees accept their use on a voluntary basis, retaining the right to select a traditional method of wage payment and the ability to revoke their consent to using a paycard at any time.

Employees who participate in the program enjoy many important advantages, including improved safety and elimination of check cashing fees. In addition to the ability to withdraw cash immediately from ATM machines and to shop online, employees can use paycards to shop at millions of merchants worldwide and receive cash back. In any event, employees always have the option to receive traditional checks and/or direct deposit.

## **Exhibit A**

### **Excerpts of Selected State Laws, Regulations and Enforcement Positions Concerning Paycards**

#### **Colorado SB120 Enacted March 20, 2008**

8-4-102. Proper Payment - Record of Wages. (2.5) (a) nothing in this article shall prohibit an employer from depositing an employee's wages on a paycard, so long as the employee:

- (I) Is provided free means of access to the entire amount of net pay at least once per pay period; or
- (II) May choose to use other means for payment of wages as authorized in subsections (1) and (2) of this section.

(b) as used in this section, "paycard" means an access device that an employee uses to receive his or her payroll funds from his or her employer.

#### **Delaware Department of Labor Regulations Adopted May 14, 2004**

Delaware Admin. Code §65-400-013(2.0)

##### **Payroll Debit Card in Lieu of Cash or Check**

Delaware's Wage Payment & Collections Act requires the payment of wages to employees in lawful money or checks payable on demand.... Employers may comply with this requirement by issuing a payroll debit card which provides the functional equivalent of cash or a check. It is the employer's responsibility to effectuate a payroll debit card system which will allow full payment of wages on the employee's regular payday and without cost to the employee. Employers may use a pre-paid debit card or general payroll fund account to establish suitable arrangements for converting wages into employee's disposable income.

#### **Kansas HB 2316 Enacted April 16, 2007**

44-314. (a) Every employer shall pay all wages due to the employees of the employer at least once during each calendar month, on regular paydays designated in advance by the employer.

(b) The employer may designate the method by which employees receive wages, provided all wages shall be paid by one or more of the following methods:

- (1) In lawful money of the United States;
- (2) by check or draft which is negotiable in the community wherein the place of employment is located;
- (3) by electronic fund transfer or deposit to an automated clearinghouse member financial institution account designated by the employee; or
- (4) by payroll card.

(c) Any employer that elects to pay wages only by a method authorized in subsection (b)(3) shall offer an alternative payment method as a default option for employees that fail to designate a financial institution account for electronic fund transfer or deposit.

(d) Any employer that elects to pay wages using a payroll card as authorized in subsection (b)(4) shall allow employees at least one means of fund access withdrawal per pay period at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement.

(e) Not less than 30 days prior to implementing a payroll program using only the methods authorized in subsection (b)(3) or (b)(4), an employer shall either:

(1) Conduct one or more employee forums to educate employees regarding the use of a direct deposit or payroll card program offered by the employer; or

(2) distribute educational information to employees about direct deposits or payroll cards as they may be used under the payroll card program offered by the employer.

(f) (1) Employers shall retain no interest in wages paid by electronic funds transferred to an employee's payroll card account, other than the right to correct inadvertent overpayments in accordance with the rules governing direct deposit.

(2) An employer may not charge an employee initiation, loading or other participation fees to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen or damaged payroll card.

#### **Maine LD963 CHAPTER 89 Enacted May 12, 2005**

"Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee.

#### **Maryland HB 751 Enacted May 26, 2005**

Maryland Labor and Employment Code

(2) 3-502 (c) Each employer shall pay a wage:

(1) in United States currency; or

... credit of the wage of an employee to a debit card or card account from which the employee is able to access the funds through withdrawal, purchase, or transfer if:

(i) authorized by the employee; and

(ii) any fees applicable to the debit card or card account are disclosed to the employee in writing in at least 12 point font.

#### **Michigan SB 851 Enacted January 3, 2005**

Sec. 6(1) An employer or agent of an employer may pay wages to an employee by any of the following methods:

(d) Issuance of a payroll debit card to the employee. As used in this section, "payroll debit card" means a stored value debit card that provides an employee access to his or her wages, for withdrawal or transfer by the employee, through a network of automatic

teller machines. The term includes cards commonly known as payroll debit cards, payroll cards, and paycards.

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(3) An employer or agent of an employer shall not issue a payroll debit card to an employee under subsection (1)(d) without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card....

(4) An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages under subsection (1)(c) or (d).

### **Nevada Final Labor Commissioner Adopted Regulations - Ch. 608 August 25, 2004**

A REGULATION relating to employment; ... authorizing an employer to use an electronic payment system as an alternative location of payment....

2. An employer may use an electronic payment system, including, but not limited to, a direct deposit, debit card or similar payment system, as an alternative location of payment if:

- (a) The employee can obtain immediate payment in full;
- (b) The employee receives at least one free transaction per pay period and any fees or other charges are prominently disclosed to and subject to the written consent of the employee;
- (c) The alternative location of payment is easily and readily accessible to the employee;
- (d) There are no other requirements or restrictions that a reasonable person would find to be an unreasonable burden or inconvenience; and
- (e) The use of an electronic payment system is optional at the election of the employee.

### **North Dakota HB 1347 Effective August 1, 2005**

34-14-02. Agreed payday - Direct deposit - Stored value card. Every employer shall pay all wages due to employees at least once each calendar month on regular agreed paydays designated in advance by the employer. Wages must be paid in lawful money of the United States,; with checks, as that item is used in chapter 41-03, drawn on banks or credit unions convenient to the place of employment, or; with direct deposit in the financial institution of the employee's choice; or, at the election of the employee when offered by the employer, by delivery to the employee of a stored value card that meets the requirements of this section. A stored value card that is used by an employer to pay wages must be issued by a federally insured bank or credit union. The value of the funds underlying a stored value card that is used by an employer to pay wages must be a deposit that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration. Before paying wages by delivering a stored value card to an employee, an employer must have deposited with the issuer funds in an amount at least equal to the wages due from the employer to each employee whose wages are being paid through a stored value card and any account fees that are charged to the employer by the issuer.

### **Oklahoma SB 1466 Enacted June 7, 2006**

An Act relating to labor; payment of wages; authorizing certain electronic payment.

Section 165.2. Every employer in this state shall pay all wages due ... at least twice each calendar month.... The amount due such employees shall be paid in lawful money of the United States, including payment by electronic means...

#### **Oregon 2007 HB 2256 Enacted June 22, 2007**

Relating to payment of wages; amending ORS 652.110, 652.200 and 652.900.

652.110. (1) A person ... may not issue, in payment of ... wages due an employee, any order, check, memorandum or other instrument of indebtedness unless the instrument is negotiable and payable without discount in cash on demand at some bank or other established place of business in the county where the employee lives or works...

(4) An employer and an employee may agree that the employer may pay wages through a direct deposit system, automated teller machine card, payroll card or other means of electronic transfer if the employee may:

(a) Make an initial withdrawal of the entire amount of net pay without cost to the employee; or

(b) Choose to use another means of payment of wages that involves no cost to the employee.

(5) An agreement described in subsection (4) of this section must be made in the language that the employer principally uses to communicate with the employee.

#### **Texas Wage Payment Law Acts 1993, 73rd Leg., ch. 269, § 1 Sept. 1, 1993.**

##### **§ 61.016. FORM OF PAYMENT.**

(a) An employer shall pay wages to an employee:

(1) in United States currency;

(2) by a written instrument issued by the employer that is negotiable on demand at full face value for United States currency; or

(3) by the electronic transfer of funds.

(b) An employee may agree in writing to receive part or all of the wages in kind or in another form.

##### **§ 61.017. DELIVERY OF PAYMENT.**

(a) An employer shall pay wages through a means authorized by this section.

(b) An employer may pay wages by: ...

(5) delivering them to the employee by any reasonable means authorized by the employee in writing.

#### **Virginia CHAPTER 358 [HB 472] Enacted April 14, 2004**

Payment of wages or salaries shall be (i) in lawful money of the United States, ... or (iv) by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full disclosure by the employer of any applicable fees and

affirmative consent thereto by the employee.

**West Virginia HB4032 Enacted March 31, 2008**

**§21-5-3. Payment of wages...**

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(b) Payment required in subsection (a) of this section shall be made:

- (1) In lawful money of the United States;
- (2) By cash order as described and required in section four of this article;
- (3) By deposit or electronic transfer of immediately available funds into an employee's payroll card account in a federally insured depository institution. The term "payroll card account" means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee's wages, salary, commissions or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or another person. "Payroll card" means a card, code or combination thereof or other means of access to an employee's payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, firm or corporation paying the compensation and the person being compensated.

**North Carolina Department of Labor**

**Wage and Hour Fact Sheet: DEBIT/PAYROLL CARD PAYMENT**

It is the administrative enforcement position of the North Carolina Department of Labor's Wage and Hour Bureau that the payment of employees by "Debit/Payroll Card" is an acceptable form of payment for North Carolina employers as long as both conditions are met

- 1) The employee can withdraw all monies due on payday.
- 2) One-time use of the card by the employee on payday is at no cost to the employee.

8-30-2005

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