

## **New York Court Issues Ruling in Paycard Case, Burdensome Paycard Regulations Remain Revoked**

On May 23, an acting justice of the *New York State Supreme Court* issued a decision, order, and judgment in the ongoing litigation involving New York's burdensome paycard regulations [*Reardon v. Global Cash Card and New York State Industrial Board of Appeals*, No. 2643-17 (N.Y. Sup. Ct., Alb. Cty., 5-23-18)]. The initial decision of the New York Industrial Board of Appeals (IBA) revoking burdensome regulations regarding payment of wages by direct deposit and paycards, plus other regulations governing wage payment methods, was annulled (declared invalid; see PAYSTATE UPDATE, Issue 9, Vol. 19).

Note that in New York, the Supreme Court is the lower, trial-level court and the Court of Appeals is the state's highest court, so this may not be a final ruling. The burdensome regulations remain revoked for now, pending further litigation.

### **Paycard provider can challenge regulations**

When the New York State Department of Labor filed its appeal of the IBA ruling last year, it argued that Global Cash Card (GCC) did not have standing to challenge the regulations before IBA because GCC is not an employer whose payment of wage practices are regulated by New York labor law. In its ruling, the court says that IBA's determination on the issue of GCC's standing to petition the IBA "will not be disturbed" as GCC has an interest in the regulations that address paycards because it was an entity that would be financially affected by the rules governing ATM access and fees.

### **IBA decision revoking burdensome regulations declared invalid**

The court declared that the IBA's revocation of the burdensome state regulations on paycards and direct deposit was annulled. The court found that it was not necessary for the IBA to revoke the wage payment regulations in their entirety. GCC was concerned with certain parts of the regulations burdening paycard use, but other methods of wage payment – including cash, check, or direct deposit – are also addressed by the regulations. According to the court, there was nothing in the record that the IBA considered that provides a "rational basis for the revocation of provisions related exclusively to the payment of wages by check or direct deposit."

### **Other issues**

GCC also asked the court to remove certain items from the record showing that the Department of Financial Services did not think the paycard regulations interfered with state banking regulations, so that the court could not consider them when making its ruling. The court denied this motion.

### **What happens next?**

The paycard provider (which is now ADP, since it acquired GCC in 2017) has until July 6 to appeal the court's decision. The burdensome New York paycard regulations remain revoked at this time, pending further litigation. It is unlikely that the

state legislature will a pass a law regulating paycard use before a final decision is issued, as the legislative session recessed on June 20.