



# PAYROLL CURRENTLY

The Compliance Publication of the American Payroll Association

Inside Washington

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## **New York Set to Regulate Payroll Cards**

The New York State Department of Labor has issued a proposed rule on “methods of wage payment” that addresses checks and direct deposit but is predominantly a proposal to regulate the use of payroll debit cards. The APA met with Deputy Secretary for Labor Elizabeth de Leon Bhargava on July 27 to discuss the proposed rule and submitted written comments on July 31

([http://info.americanpayroll.org/pdfs/gov/APA\\_Comments\\_re\\_NY\\_LAB-21-15.pdf](http://info.americanpayroll.org/pdfs/gov/APA_Comments_re_NY_LAB-21-15.pdf)).

“As a general matter,” APA wrote, “the APA supports the Department’s efforts to adopt rules that ensure that all employees have full and free access to their wages and define the responsibilities of employers with respect to each method of payment. We are concerned, however, that the Proposed Rule imposes a number of burdensome and costly requirements on payroll debit cards that are not imposed on other methods of payment and go beyond requiring full and free access to wages. These requirements will make it less likely that employers and issuers will be able to continue to offer this beneficial payment method in the State of New York. In addition, we are concerned that a number of the provisions of the Proposed Rule are vague and, therefore, provide employers with little guidance as to what is needed to comply.”

### **Onerous provisions**

The proposed rule would establish a seven-day waiting period, after the date of hire, before the employer could offer an employee a payroll card. APA explained that this would cause significant hardship on employers and employees alike, as it would interfere with the hiring and on boarding practices of many APA members. As one APA member put it: “We have many employees in New York who choose payroll cards after reviewing the disclosures and rules with our personnel department. It would be unfair and leave a bad first impression to make these employees wait two weeks before receiving this benefit, plus the process would take more of the employees’ time a week later to give consent after they’ve already made a decision. It would also be very burdensome for our store personnel to keep track of this seven-day time period for multiple employees with various start dates, and then track them down after they have started working – particularly as personnel would have already reviewed disclosures previously with the employee.”

The proposed rule would also require that any company offering payroll cards would need to provide unlimited free in-network ATM access. In fact, the proposed rule would prohibit almost all fees associated with the card accounts. Currently, although card providers may offer free in-network ATM access to some clients, they do not offer it universally. Clients with greater numbers of cardholders are likely to receive more generous program packages. Providers argue that it is not economically feasible to offer their platinum packages to everyone. “The proposed rule would require payroll card accounts to have more favorable terms than most checking accounts,” says Cathy Beyda, Esq., chair of the APA’s Government Relations Task Force Subcommittee on Payroll Cards.



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Bhargrava doesn't argue with that assessment. When meeting with Beyda and Bill Dunn, CPP, APA Director of Government Relations, Bhargrava said that more was expected from payroll card programs specifically because employees do not have a choice among programs. "If I don't like the bank where I receive direct deposit, I can go to another bank," she said. "That choice doesn't exist with a program selected by the employer." In turn, APA said that since no worker may be forced to use a payroll card in New York, and because workers may revoke their participation at any time, the added protections are unnecessary and excessive.

## **Payroll cards vs. check payments**

Payroll card holders are guaranteed the ability to cash out their wages, to the penny, each pay period. The APA has argued that employees might not have that option with their paper checks if they rely on check cashing services. In New York, those fees are capped at 1.64% of the check's value, according to the New York City Department of Consumer Affairs.

Importantly, workers in New York may not have the same need to rely on check cashers as workers in other states. The proposed rule would clarify that any employer in New York paying wages by paper check must provide a means for its employees to cash their paychecks without charge at a financial institution or other establishment reasonably accessible to the employee's place of employment. While the provision may surprise many companies doing business in New York, it is not new. The requirement has been in effect since at least 2010, when it was published in an opinion letter (<http://labor.ny.gov/legal/counsel/pdf/Pay%20by%20Check%20%28Sec.%20192%29RO-10-0028%20-%20Pay%20by%20Check.pdf>).