



# PAYROLL CURRENTLY

The Compliance Publication of the American Payroll Association

Inside Washington

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## Update on the Payroll Card Lawsuit in Pennsylvania

In the Commonwealth of Pennsylvania, a McDonald's franchisee was sued in 2013 by 2,380 employees in a class action for paying them with only a payroll card. The trial court denied the franchisee's request for summary judgment, but cleared the case for immediate appeal on the legal question of whether payroll cards are the equivalent of payment of wages by "lawful money of the United States or check." According to the court, payroll cards are not money or a check and not permitted under Pennsylvania's Wage Payment and Collection Law (WPCL; 42 Pa. C.S. §260). APA filed an *Amicus curiae* (friend of the court) brief in mid-November regarding issues associated with the lawsuit (<http://info.americanpayroll.org/pdfs/gov/APA-PA-PaycardAmicusBrief.pdf>).

### APA reply brief

In December, APA submitted a petition to file a reply brief in the case, officially known as *Siciliano v. Mueller*. Usually, when a party is filing a brief as *Amicus curiae*, a second brief is not submitted. However, the plaintiffs have mischaracterized APA's message to the court. In their brief, the plaintiffs mistakenly contend that the APA "plainly admits" that the exclusive use of payroll cards to pay wages is not authorized under Pennsylvania law. On December 29, the court granted APA's petition to file the reply brief. This is the final step before the court makes a decision in the case.

### APA provides important information to the court

The issue before the court is whether the payment of wages using a payroll card constitutes payment in "lawful money of the United States or check" for purposes of the WPCL. As experts in the area of wage payment, APA's *Amicus* brief provided the court with important additional information relating to the nature and function of payroll cards. The APA also cautioned that the court's ruling could have a widespread and potentially detrimental impact on tens of thousands of employers and employees in Pennsylvania. The APA did not seek to support either party through its *Amicus* brief, but to ensure that payroll cards remain a permissible method of wage payment in Pennsylvania.

APA clearly explained that employees who receive wages via a payroll card are able to cash out their net wages each pay period, on demand, at a financial institution and, therefore, that payroll cards function like checks. Employees can take a branded payroll card to the teller at any financial institution that is a member of the applicable payment brand (Visa or MasterCard) and withdraw their full net wages each pay period without cost.

The APA further observed that several states treat payroll cards like checks for purposes of their wage and hour laws. Laws and interpretation of laws in other states do not always apply, but in this situation, APA believes that the treatment of payroll cards by other states is relevant because they provide the court with important insight into the nature, function, and mainstream acceptance of payroll cards.

**Lack of payroll card legislation.** APA also questioned the plaintiffs' interpretation of why the Pennsylvania General Assembly did not enact specific



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legislation on the issue of payroll cards. Lack of legislation does not necessarily mean that a decision-making body does or does not support a position.

The legislative process has been slow, with only half of the states having updated their wage payment statutes and/or regulations to expressly address payroll cards. This is partly because the wage and hour administrative agencies across the country were so swift to recognize payroll cards to be a permissible method of wage payment under their existing statutory frameworks. Today, regulators in virtually every state recognize payroll cards to be a permissible method of wage payment whether or not the state's wage payment statute has been amended to expressly address the payment method. In fact, the APA is aware of only one state, Connecticut, where the use of payroll cards is in question.