



PAYROLL CURRENTLY

The Compliance Publication from the American Payroll Association

Inside Washington

April 1, 2016

Pennsylvania Superior Court Holds Hearing in Payroll Card Lawsuit

On March 15, 2016, the Superior Court of Pennsylvania, Middle District (Harrisburg), heard arguments in an appeal of the case of *Siciliano v. Mueller*. The court must decide whether payroll cards are a permissible wage payment method in Pennsylvania. APA Government Relations staff attended the hearing.

Background

In 2014, a Pennsylvania McDonald's franchisee was sued by 2,380 employees in a class action for paying them with only a payroll card. The trial or common pleas court denied the franchisee's request for summary judgment and then cleared the case for immediate appeal on the legal question of whether payroll cards are the payment of wages by "lawful money of the United States or check." According to the common pleas court, payroll cards are not money or a check and not permitted under Pennsylvania's Wage Payment and Collection Law (42 Pa. C.S. § 260).

On appeal to the Pennsylvania Superior Court, APA filed an amicus curiae (friend of the court) brief in mid-November 2015 regarding issues associated with the lawsuit, but without taking a position in support of either the employees or employer (<http://info.americanpayroll.org/pdfs/gov/APA-PA-PaycardAmicusBrief.pdf>). APA filed a reply brief in December 2015 after the plaintiffs-appellees (employees) blatantly mischaracterized APA's position on whether payroll cards are per se legal (see "[Inside Washington](#)" for [January](#)).

Judicial panel

The case was heard by a three-judge panel: Judge Anne E. Lazarus, Judge Victor P. Stabile, and Judge Alice B. Dubow. Matthew J. Hank, Esq., from the law firm Littler Mendelson, P.C., represented the franchisee. David S. Senoff, Esq., from Anapol Weiss, represented the employees.

The main questions from the judges focused on three key interests: (1) the mandatory nature of the franchisee's use of payroll cards; (2) whether payroll cards are legal in Pennsylvania; and (3) whether allowing payroll cards in Pennsylvania is a legislative issue or one for the court to decide. Judge Lazarus asked whether the payroll card funds were placed in an employer account. Hank stated that the employees' money was "free and clear." Judge Stabile asked about the mandatory nature of checks, implying that if an employer is required to pay employees with a check and a payroll card is similar to a check, i.e., plastic check, why would the mandatory nature of a payroll card be any different? Senoff responded that checks are mandatory under Pennsylvania statute and payroll cards are not.



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Courts versus legislatures

“Legislating from the bench” is a term often used in political debates over court appointments, but it is rarely explained. The term implies two types of judges: those who interpret the law and those with a political agenda who create the law. In practice, this definition is simplistic. Law is sometimes created through legal interpretation. This is especially true when laws are vague or left open to interpretation (e.g., due process of law, equal protection of the law, and cruel and unusual punishment).

The APA believes the question in this case is whether “lawful money of the United States or check” is a term open to interpretation by the court and, if so, does it include payroll cards? Conversely, if the court believes that the term is clear and the words “payroll card” are not included, the court may decide to push the issue back to the legislature.

Judge Lazarus repeatedly asked whether the issue is best left to the legislature because payroll cards are not specifically included in the Pennsylvania statute. Hank argued that these types of decisions are regularly made by courts. He pointed to court rulings that extend First Amendment free speech protection to Internet communication even though the First Amendment does not mention the Internet. Senoff argued that the court is the wrong forum for deciding the issue, but did not explain why. However, he did state that this was not the employees’ issue. He emphasized that if the franchisee offered payroll cards as an option for employees, a lawsuit would not have been filed.

Pending decision

There is no deadline for a decision in this case. The court ruling could come in weeks or years. This may create some uncertainty for payroll card use in Pennsylvania. In May 2014, Pennsylvania State Representative Ed Neilson (D-Philadelphia) introduced legislation creating an “explicit employee authorization” provision with use of payroll cards. However, the bill did not move. APA is monitoring the legislature and will take action, as needed, to advocate for appropriate payroll card laws.