



PAYSTATE UPDATE

The Latest State and Local Payroll Compliance News from the American Payroll Association

Volume 19

Issue # 4

February 20, 2017

Burdensome New York Paycard, Direct Deposit Regulations Will Not Take Effect March 7

On February 16, the *New York* Industrial Board of Appeals ruled that the burdensome New York regulations regarding payment of wages by paycard and direct deposit, scheduled to take effect on March 7, 2017, are invalid and are revoked [*Global Cash Card, Inc. v. Commissioner of Labor*, No. 16-120, 2-16-17].

The payroll industry feared the implementation of the regulations would have severely interfered with the ability to offer payroll cards in New York. The use of payroll debit cards for New York employees remains generally permissible as long as certain conditions are met (e.g., employee must consent, no fee to access full wages). Employers are no longer expected to use the sample notice and consent templates that APA recently commented on (see **PAYSTATE UPDATE, Issue No. 3, Vol. 19**).

Appeal possible

The New York Department of Labor (DOL), the agency that issued the regulations, has 60 days to appeal the Board's ruling.

Paycard provider challenged rules

Global Cash Card (GCC), a national provider of payroll debit cards, filed a petition with the Board on October 21, 2016, alleging that the regulations were invalid or unreasonable (see **PAYSTATE UPDATE, Issue No. 22, Vol. 18**). GCC claimed the regulations exceeded the DOL's authority and violated separation of powers between the state legislature and the executive branch of state government, were preempted by federal banking law, and included vague and unreasonable provisions.

DOL exceeded authority

The Board agreed with GCC, finding that the regulations are invalid because they exceed the DOL's rulemaking authority by regulating banking services. The regulations go beyond New York Labor Law §192, which deals with the relationship between employers and employees, by placing restrictions on financial institutions.

According to the Board, the DOL's prohibitions against fees charged by paycard providers is not within its authority because the New York Department of Financial Services regulates banks and financial institutions and the fees they may charge. This includes fees related to checking accounts (into which employers deposit employees' wages) and licensed check cashers (where employees may choose to cash paychecks).

The DOL had received comments expressing concern that it was making rules regulating financial services. Two state senators pointed out that several restrictions placed on a payroll card account appeared to be beyond DOL's authority to regulate and were duplicative of, or in conflict with, federal regulations (Regulation E).

No paycard bill passed

The Board said that its view that the DOL has exceeded its authority is supported by the state legislature's repeated efforts to pass legislation to amend the wage



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payment statutes with regard to paycards. The legislature's failure to amend the law demonstrates its satisfaction with the current law or an inability to reach a consensus on the manner in which paycards should be regulated under the labor law, if at all.