



PAYSTATE UPDATE

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

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New York Adopts Burdensome Paycard Regulations

The *New York* Department of Labor (DOL) has adopted regulations on wage payments that will take effect on March 7, 2017 [12 NYCRR §192]. The rule covers payment of wages by direct deposit and paycards, and places severe restrictions on both methods of payment. Other than minor changes to the consent requirements, there are no changes to the proposed rule that was previously issued in June. APA submitted lengthy comments each time a new rule was proposed, voicing concerns about the negative effect the rules could have on employers and employees.

Written notice and consent

Employers paying employees by paycard or direct deposit will be required to provide employees with a written notice that identifies the following:

- (1) A plain language description of all of the employees' options for receiving wages;
- (2) A statement that the employer may not require the employee to accept wages by paycard or by direct deposit;
- (3) A statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and
- (4) If offering employees the option of paycards, a list of locations where employees can access and withdraw wages at no charge within reasonable proximity to their place of residence or place of work.

Employers will also be required to obtain consent from an employee in writing and must ensure that:

- (1) The employee's informed consent is obtained without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment by direct deposit or paycard; and
- (2) The employer does not make payment of wages by direct deposit or paycard a condition of hire or continued employment.

Electronic notice and consent allowed. Written notice and written consent may be provided and obtained electronically, so long as an employee is given the ability to view and print both items at work, without cost to the employee, and the employee is notified of his or her right to print the items.

Note that notice and consent templates will be available, in several languages, on the DOL's website (see www.labor.ny.gov).

Prior consent and authorization. The DOL acknowledges, in a response to a comment on the rule, that consents given prior to the effective date of the rule (without the required notice) will remain valid so long as the notice required by the rule is given to employees prior to the effective date of the rule (March 7, 2017) and employees are expressly notified of their right to withdraw consent.



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Direct deposit and recordkeeping

Employers must maintain a copy of an employee's consent to receive his or her wages via direct deposit for the length of employment and for six years following the last payment of wages via direct deposit. A copy of the consent must also be provided to the employee.

Requirements for paying via paycards

Seven-day waiting period. When paying wages by paycard, the employer must provide the required notice and receive consent at least seven business days prior to paying wages by paycard (the employee's consent does not take effect during the seven business days).

Also, an employer will not be permitted to pay wages by paycard unless it provides local access (near the employee's home or work) to one or more ATMs that offer withdrawals at no cost to the employee and at least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the paycard without the employee incurring a fee.

Prohibited fees. Note that an employer cannot charge (directly or indirectly) an employee a fee for any of the following services:

- (1) Application, initiation, loading, participating, or other action necessary to receive wages or hold a paycard;
- (2) Point-of-sale transactions;
- (3) Overdraft, shortage, or low-balance status;
- (4) Account inactivity;
- (5) Maintenance;
- (6) Telephone or online customer service;
- (7) Accessing balance or other information online, by phone, or at any ATM;
- (8) Providing the employee with written statements, transaction histories, or the card issuer's policies;
- (9) Replacing the paycard at reasonable intervals;
- (10) Closing an account or issuing payment of the remaining balance by check or other means; or
- (11) Declined transactions at ATMs that do not provide free balance inquiries.

Paycards cannot be linked to any form of credit, and the funds on the paycard must never expire. The paycard account may be closed for inactivity, provided that the issuer gives reasonable notice to the employee and the remaining funds are refunded to the employee within seven days.

Change in terms and conditions. At least 30 days before any change in terms and conditions of the paycard take effect, an employer must provide written notice in plain language, in the employee's primary language (or a language the employee understands) in at least 12-point font, of any change, including a change to the itemized



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list of fees. The employee must be reimbursed for any new or increased fee charged before the 30-day period.