



# PAYSTATE UPDATE

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

Volume 18

Issue # 4

February 15, 2016

## **APA Following Paycard Proposals in Several States**

In January, state legislatures opened and will consider a host of new legislation. APA's Government Relations Division is monitoring paycard bills and regulatory proposals that could impact payroll professionals in the following states: *Connecticut, New York, Washington, and West Virginia.*

### **Connecticut legislation may be introduced**

For several years, APA has worked with state officials who are interested in regulating payroll cards. Last year, APA sent a letter to the Connecticut Department of Labor outlining areas of agreement on potential payroll regulation. APA expects that legislation will be introduced soon and will work to ensure that it does not restrict payroll card use in the state.

### **New York final rule expected in June**

The end of the New York State Department of Labor's (DOL) lengthy effort to regulate wage payments may be in sight (see PAYSTATE UPDATE, Issue No. 24, Vol. 17). Last year, the DOL took the unusual step of providing a second notice and comment period because of the substantive revisions it made in response to public comments on the first proposed rule. APA anticipates that the final rule will be released in June.

### **Washington bill likely to be amended**

On January 13, a bill that would place severe restrictions on paycard use was introduced in the state legislature (H.B. 2505; see PAYSTATE UPDATE, Issue No. 3, Vol. 18). Later in the month, APA and other stakeholders held a meeting with Washington representative Graham Hunt (R-2nd District) concerning the proposed legislation. Although the Washington DOL already has a clear position on payroll cards, Hunt believed it did not go far enough to protect vulnerable workers.

Originally, the bill called for free ATM access as well as a ban on maintenance fees, declined transaction fees, and balance inquiry fees. Stakeholders asked Hunt to reword the ban on balance inquiry fees to instead require that at least one method of obtaining balance inquiries be provided for free. Stakeholders also asked that the requirement for free ATM access and the ban on declined transaction fees be removed. Further, stakeholders asked that the ban on maintenance fees only apply during the employment relationship and for 60 days thereafter. Since the meeting, Hunt resigned his seat amidst allegations that he misrepresented his military service. Committee leaders assured stakeholders that the bill would only proceed with the amended language.

### **West Virginia bill amendment not supported by APA**

Also in late January, the West Virginia Senate passed legislation that would regulate paycard use (S.B. 290). APA supported the bill when it was first introduced but that support evaporated when Senator Jeffrey Kessler (D-2nd District) added an amendment with provisions that are impossible to satisfy and would make it impossible



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for companies to offer payroll cards in the state. APA issued a statement to state legislators supporting the bill but opposing the amendment.

The most onerous provision in the Kessler Amendment would prohibit employers from offering payroll cards that limit the daily amount an employee may withdraw from the payroll card account. APA explained: "To comply with the Bank Secrecy Act, financial institutions are required to adopt policies, procedures, and controls that are designed to protect against money laundering. Daily withdrawal limits are a standard control designed to mitigate these risks and are imposed on most debit cards connected to a checking account as well as prepaid card accounts. A financial institution that fails to impose daily withdrawal limits on payroll card accounts would risk having its anti-money laundering program found to be inadequate by federal regulators."

Further, the requirement is unnecessary because employees are able to make a withdrawal of their full net wages without cost each pay period. Withdrawal limits also act as a security measure to reduce losses in the rare event that a lost or stolen card is used fraudulently. While that provision would make payroll cards impracticable, another provision would threaten the cards' economic viability. "This is because the amendment would prohibit employers from utilizing a payroll card that charges any fees for using or withdrawing funds from the card," APA wrote.

The fee prohibition is also unnecessary, APA said, because the West Virginia Division of Labor already interprets state law as prohibiting excessive user fees or charges on payroll cards and direct deposit.