

# PAYTECH

*The Official Publication of the American Payroll Association*

## **Inside This Special Issue:**

Preparing for Year-End,  
Government Corner,  
Payroll Points, and  
State Issues

## **COMBAT Overpayment**

Gain the Tools You Need  
To Ensure Proper Payment

A

A paycheck is a wonderful thing. Every member of the American workforce counts on payday, and it's the hard-working payroll professionals like you who make that happen.



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# PAYTECH

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This 16-page special edition of PAYTECH, APA's exclusive monthly membership magazine, is just a sample of some of the articles that appear in the full-length edition. Each month you will receive at least 64 pages of payroll news and features as part of a complete lineup of APA membership benefits. Whether you need information about the latest trends in outsourcing, time and attendance technology, or legislative and regulatory issues, PAYTECH is your source.

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A close-up photograph of a person wearing a bright green suit jacket, a white dress shirt, and a green and blue striped tie. The person's hands are holding a thick stack of US dollar bills, including several \$100 bills, which are fanned out. The background is a solid light green color.

Manage  
**the Dark Side**  
of Overpayments

BY KAREN SALEMI, FLMI, CPP

When I was a college student working in a coffee shop, I glanced at my paycheck one day and noticed that I had been overpaid. As a waitress, my employer paid me the tip credit wage of \$2.13 an hour. I also worked as a hostess, for which I was paid the minimum wage of \$4.25 an hour. But I had been paid \$4.25 for the hours I had worked as a waitress, instead of \$2.13.

I notified my boss, and he said he'd take care of it. The next week, I noticed the same thing. I went back to my boss, who again said he'd take care of it. This went on for a few more weeks. I started to worry that, at some point, I'd have to work free of charge in order to pay it all back.

Finally, my boss told me, "I have notified the payroll department every week now for six weeks. Don't worry about it; you did the right thing."

It would be nice if all of our employees came to us immediately when overpaid. However, that's probably not going to happen, which is why it is important to have good balancing tools and to use them each pay cycle.

Keep in mind, even if we do everything we can to ensure we pay our employees properly, mistakes will happen. So prevent what you can, and plan how to deal with those situations you can't prevent.

#### **OVERPAYMENT REPAID IN CURRENT YEAR**

When an employee is overpaid, there are several factors to consider. These factors, and the amount of time it will take to correct the situation, are somewhat dependent on how long the employee has been overpaid, how long before it has come to your attention, and if the repayment has, or will, cross years. Let's take a look at a couple of different situations.

Suppose an employee is overpaid and the situation

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*Karen Salemi, FLMI, CPP, is a BTO Training Consultant for IBM and a member of PAYTECH's Board of Contributing Writers.*

is such that the employee can repay the amount back in a relatively short period of time—maybe even in the next pay period. The amount can, and will, be repaid prior to the end of the current year. There are a variety of ways to collect back the amount due, but which way is the right way?

The biggest concern is to maintain compliance from both the employer and the employee perspective. Remember, your job is to create accurate paychecks for employees by calculating their pay and their withholding properly. You don't want to inadvertently underwithhold employees' income taxes. This means that after you make any adjustments for repayment of funds, you want the employee's gross-to-net pay, and taxable income, to equal what it would have been had the employee been paid correctly in the first place. Unfortunately, overpayments affect the employee's taxable wages reported for federal, FICA, state, and local purposes, as well as the respective taxes.

So what are your choices for repayment, assuming the repayment will be made in the same year as the overpayment?

If the overpayment was an entire check—and the employee cashed the check or you can't do an ACH reversal—you can void the payment and collect back the net amount as an after-tax deduction. This after-tax deduction can occur in one or more pay cycles; however, the entire amount must be collected *before the end of the year* (don't forget to track it). Or, the employee can give you a check for the net amount.

If the overpayment was for some number of hours or a flat amount, the most accurate way to determine the repayment amount is to calculate "what should have been paid" and compare that gross-to-net calculation to "what was paid." The difference between the two is the gross-to-net adjustment that needs to be made to the employee's record, with the net amount being the repayment due from the employee.

Could the gross amount be deducted, either in

one lump sum or over several pay cycles? Yes, however, that may not be the most accurate way to collect the repayment, as either an increase or decrease in gross pay has an effect on the employee's tax withholdings, and you don't want to inadvertently under withhold.

If the employee is overpaid and makes a repayment in the same year, four steps have to be determined and completed:

- the gross-to-net amount of the overpayment;
- how to adjust the employee's payroll record gross-to-net;
- how the employee is going to repay the net amount due; and
- the appropriate accounting entries and other reporting requirements.

#### OVERPAYMENT THAT CROSSES YEARS

What if there is a delay in determining the overpayment situation, or the employee cannot repay the amount in the same year? Should the situation be handled in the same way? No, at least not if you want to remain in compliance. When an overpayment crosses years, there are a few additional factors to consider.

Because the IRS uses the rule of "constructive receipt" in

determining a taxpayer's tax liability, the employee is taxed on income the same year they received it. This means that, from an income tax perspective, if the employee was overpaid in a prior year, you do not go back and adjust their Box 1 wages for the overpayment amount.

Once the gross-to-net amount of the overpayment is determined, adjust the prior year's Form W-2 to reduce only the Social Security and Medicare wages and taxes. In order to do that, you need a signed statement from the employee stating that they will not seek a refund of those same taxes.

At a minimum, the amount due back from the employee will be the net, plus the amount associated with the overpayment for federal (and state) income taxes. If there were other deductions from pay, a determination has to be made as to whether or not they stand or if they need to be adjusted as well.

#### GOOD PRACTICES

Like many other areas in payroll, if there are good controls, quality audits, and good balancing procedures, the need for corrections after the fact can be eliminated. But human we are, and as such, mistakes will happen. Let's do what we can up front to eliminate the dark side of overpayments. ■

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# Year-End...

## It's Just Around the Corner

BY TRACIE SAWADE, CPP

Here it comes—another year almost gone and another year-end on the horizon. While year-end happens only once a year, it's truly a yearlong process. Preparing for year-end is like any other project; it takes planning and a solid team. Here are some simple tips and tricks to help you survive this year-end season.

### START EARLY

It's never too early to start the year-end process. In fact, it's not uncommon to start the process in January. This may seem a little crazy, but consider this—you are processing payrolls throughout the year and have an opportunity to keep the process clean and error-free with each and every payroll you process.

One of the last steps in processing a payroll is to balance. If you properly balance the payroll, calculate and tie out the taxes, and check for W-2 errors as part of your payroll or monthly process, you will be miles ahead when you get to year-end. Balancing on a period basis enables you to find errors as they occur, and leaves you plenty of time to fix them.

Starting early will undoubtedly reduce the stress you feel at year-end. It's not too late, though; you still have time to prepare. If you haven't started already, there is no time like the present.

### MAKE A CHECKLIST

Every day, month, or year, we learn something new or add something to



our list of “things to do.” Year-end is no different. There are so many tasks, it is nearly impossible to do it without a list. Start with items you did last year and add to it things you missed or new tasks that might come up this year. Form a list based on your experience and your company's requirements. That list can include the following:

- Check banking holidays, processing dates, company holidays, and tax due dates.
- Take note of taxable fringe benefits your company offers and who is

tracking them.

- Order Forms W-2, if necessary.
- Remind employees about verifying their names and addresses, and request that employees complete a new W-4 or new W-5, if required.
- Understand compliance issues and due dates, changes to forms, and changes to reporting requirements.
- Find out when tax updates will be available for your system.
- Understand cut-off dates (if you use a service provider).
- Make sure benefit rate changes are in.
- Make sure limits are updated.
- Reset the accumulators for the new year and extend the payroll calendar for the new year.
- Balance the year-to-date payroll.
- Make sure you have your PIN for SSA if filing electronically.
- If providing electronic W-2s to employees, gain affirmative consent.
- Make sure you have plenty of postage if mailing W-2s.

### CREATE A TEAM

While this may not be necessary or practical in January, by third quarter it is preferable to have a team in place in preparation for year-end. Be sure to include all the critical players—HR, IT, accounting, payroll, tax, and anyone else who might be impacted by the year-end process.

Plan regular meetings; start with meetings once a month or every other week, then increase the frequency as needed. Have an agenda, and maintain a project plan. Make sure all tasks are assigned, have due dates, and hold all team members accountable for their tasks.

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*Tracie Sawade, CPP, is System Consultant for Ultimate Software.*

**RECONCILE/BALANCE TAXES**

Create a spreadsheet and compare the taxable wages and taxes. The spreadsheet should include columns for gross wages, FIT taxable wages, FIT (federal tax), social security taxable wages, social security taxes, Medicare taxable wages, and Medicare tax.

Add columns to manually calculate the social security and Medicare taxes (taxable wages x 6.2% for social security and taxable wages x 1.45% for Medicare), and make sure the taxes balance. All of these amounts can typically be found on a payroll or tax register.

Be sure to add every payroll to the spreadsheet and include month-to-date, quarter-to-date, and year-to-date summaries. This spreadsheet can be used to balance payroll reports to quarterly Forms 941 and W-2s at year-end. Your spreadsheet might look something like Figure 1 (see below).

**TESTING**

Since year-end is a project, treat it like one. Include time for testing in the project plan, then test, test, and test some more. Your IT department may be able to help you build a test

environment where you can test the year-end close process, as well as the new-year begin. If so, leave adequate time for this step. Include anything unusual like tax updates, system changes, company changes, W-2 creation, and printing, or anything that would not normally be included in the day-to-day business of running payroll.

You can never be too prepared, and testing will help ensure that you can meet your deadlines, that employees will get their W-2s on time, and that agencies will receive accurate files on time. Testing will also help you refine your checklist.

**ADDITIONAL RESOURCES**

APA has several resources for year-end, including a one-day class called Preparing for Year-End and 2011. The class will present everything you need to know to close one year and start the next, including the latest compliance updates. Visit the “Courses & Conferences” tab at [www.americanpayroll.org](http://www.americanpayroll.org) for more information.

The IRS also has good information available at [www.irs.gov](http://www.irs.gov), including the

following helpful publications:

- Publication 910 (IRS Guide to Free Tax Services)
- Publication 15 (Circular E—Employer’s Tax Guide)
- Publication 15A (Employer’s Supplemental Tax Guide)
- Publication 15B (Employer’s Guide to Fringe Benefits)
- Publication 509 (Tax Calendar)

Some compliance issues to watch for annually are changes to fringe benefit limits like transportation, flexible spending or health savings accounts and 401(k) deferrals, social security wage limit, changes to per diems and mileage rates, form changes, requirements for electronic filing, and due dates.

**HAVE A PARTY**

Be sure to celebrate your success, no matter how big or small. Having a successful year-end is a huge accomplishment, one that is worthy of a little celebration. Be sure to include everyone who contributed.

With a little planning and preparation, year-end can be a smooth and rewarding process. Avoid the panic and get started today. ■

**Figure 1: Tax Reconciliation Spreadsheet**

Company Name Payroll Control Tax Recon	Fed Wages	Fed Withholding	Social Security Wages	Social Security W/H	Medicare Wages	Medicare W/H	AEIC
1/15/2010	150,000	25,000	160,000	9,920	160,000	2,320	10
1/31/2010	200,000	45,000	215,000	13,330	215,000	3,117.50	10
2/15/2010	175,000	30,000	290,000	17,980	290,000	4,205	10
2/28/2010	150,000	25,000	165,000	10,230	165,000	2,392.50	10
3/15/2010	150,000	25,000	165,000	10,230	165,000	2,392.50	10
3/31/2010	225,000	50,000	250,000	15,500	250,000	3,625	10
Jan Totals	350,000	70,000.00	375,000.00	23,250.00	375,000	5,437.50	20.00
Feb Totals	325,000	55,000.00	455,000.00	28,210.00	455,000	6,597.50	20.00
Mar Totals	375,000	75,000.00	415,000.00	25,730.00	415,000	6,017.50	20.00
Q1 Totals	1,050,000	200,000	1,245,000	77,190	1,245,000	18,052.50	60
YTD totals	1,050,000	200,000	1,245,000	77,190	1,245,000	18,052.50	60

# New ACH Rules Make Some Payroll Pros Feel Like Cops

BY WILLIAM DUNN, CPP

The new rules on International ACH Transactions (IAT) are making some in our profession feel as though they have been deputized by the U.S. government.

The payroll profession accepted its role as the nation's tax collectors long ago. Withholding income tax from employees' pay and remitting it to the Internal Revenue Service comes with the territory. Employers may also feel like social workers, since they collect 70% of all child support in the United States by withholding it directly from employees' income.

But the new ACH rules may require employers to look further into the personal finances of their employees. This has caused some people to cry foul.

## IAT BASICS

Direct deposit payments made through the U.S. ACH network are generally formatted using the Standard Entry Class (SEC) code "PPD." These formats do not identify either the payer or the payee by name or address.

Since September 18, 2009, any financial transaction coming into or leaving the United States through the ACH network must be formatted

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with the code "IAT." The IAT code also requires that an addendum record be completed. The addendum record has 12 data fields, of which seven are mandatory.

The mandatory fields include data that identifies both the payer and payee. If the fields are not properly completed, the ACH Operator will reject the transaction. The IAT format provides a level of transparency to ACH transactions equal to that of

international wire transfers.

The rules were written by NACHA, the Electronic Payments Association, at the direction of the Office of Foreign Assets Control (OFAC), a law enforcement arm of the U.S. Treasury. OFAC is responsible for enforcing U.S. laws that impact our financial system. That duty includes thwarting terrorists and narcotics traffickers who use the ACH system to fund their operations.

An employer that fails to properly format its IAT transactions may have its origination privileges suspended or revoked. Fines range from \$10,000 to \$100,000 per occurrence.

## DEPOSITS AND SUBSEQUENT DEPOSITS

There are a few common scenarios that trigger the IAT requirement. The first scenario makes sense: If a U.S. company deposits an

employee's pay directly into a foreign bank account, that triggers the IAT.

Other scenarios are not as clear. For example, if a foreign parent company funds a U.S. company's payroll, after the funds hit the U.S. ACH system, any subsequent deposits into employees' bank accounts need to be coded as IATs.

The issue of subsequent deposits generally has payroll confused and upset. Many feel that the scenario

with the parent company includes two separate transactions—the initial deposit into the U.S. bank and then the direct deposit wage payments. But if the initial deposit is intended solely to fund the company payroll, the federal government sees it all as one transaction, from the parent company to the employees.

Note that, where a parent company funds a U.S. company's payroll through a larger deposit of general funds, the subsequent direct deposit wage payments are not considered IATs.

Other "subsequent transfer" issues are even more difficult. A subsequent transfer by an employee who has received a payroll deposit becomes complex for payroll, because the employer usually has no knowledge of any subsequent transfers the employee might transact.

Payroll professionals have expressed dismay at the government's position that the employer is responsible for properly coding IAT transactions that it doesn't know about. The response from NACHA and OFAC has been that employers have an obligation to understand the transactions they undertake.

#### COMMON PROBLEMS

One of the more common scenarios for a subsequent transaction occurs when an employee resides in another country but is paid through an account in the United States. Not all payroll software programs allow for international ACH payments, so employers may make a practice (for lack of an alternative) of making all direct deposit payments into U.S. bank accounts.

Residents of Canada or Mexico might cross our border for work daily. In order to have their money easily accessible at home, they might arrange for the U.S. bank to automatically transfer their pay into a bank in their home country.

If the entire amount of the deposit is subsequently transferred, then the IAT requirements apply to the initial deposit of the pay to the U.S. bank account. As with the corporate transaction described above, the U.S. government looks at the entire transaction and sees a U.S. company making a payment that ends up in a foreign bank account.

Again, this applies only when the entire payment is transferred. If an employee residing in the United States

*deposit of payroll. If you receive your payroll via direct deposit at a U.S. bank and then have the entire payroll amount forwarded to a bank in another country please advise the payroll department. There are new formatting requirements for these transactions that the company needs to follow. It will not impact your payroll.*

According to NACHA, the number of ACH transactions formatted as IATs ranged from 300,000 to 455,000

Due diligence requires payroll to ask employees if they are making subsequent transfers of their entire pay.

regularly transfers a portion of his or her pay to family in another country, the IAT rules do not apply. Similarly, if an employee on foreign assignment transfers a portion of his or her pay into an account in the foreign country in order to have some spending money while on assignment, the transaction is not an IAT.

#### HOW IS AN EMPLOYER TO KNOW?

Due diligence requires payroll to ask employees if they are making subsequent transfers of their entire pay. A question of this sort calls for some tact in order to avoid a knee-jerk response, "Buzz off, it's none of your beeswax."

NACHA suggests sending the following message or similar language to employees, which should help alleviate any unease that the employer is prying into the employee's personal affairs without cause:

*There have been recent changes to the payment system rules for direct*

in the three months after the rule was implemented. This was a mere fraction of the number of transactions that should have been formatted as IATs. Banks have reported rejecting hundreds of transactions every day in the weeks following the rule's effective date because they were not formatted properly.

NACHA tells APA that education among employers needs to continue and improve so that international ACH transactions are formatted properly. Although payroll professionals may feel as though they have been deputized, one might presume this to be preferable to the fines and added scrutiny of noncompliance.

A host of educational materials is available from APA, NACHA, and other sources. APA has produced a webinar on demand, which may be found at <http://www.americanpayroll.org/product/?cid=50&gid=124>. IAT materials may also be found on the NACHA website at [www.nacha.org/IAT\\_Industry\\_Information](http://www.nacha.org/IAT_Industry_Information). ■

# IRS Adjusts Withholding Rules on Wages Paid to Nonresident Aliens

BY ANNE S. LEWIS, ESQ.

The IRS has announced a modification in the rules for determining the amount of income tax employers must withhold from wages paid for services performed by nonresident alien employees within the United States [Notice 2009-91, 2009-48 IRB 717; [www.irs.gov/pub/irs-drop/n-09-91.pdf](http://www.irs.gov/pub/irs-drop/n-09-91.pdf)].

## NONRESIDENT ALIEN EMPLOYEES AND THE STANDARD DEDUCTION

Income tax withholding tables in Publication 15 (Circular E), *Employer's Tax Guide*, are based on the assumption that the employee receiving the wages is entitled to a standard deduction in determining his or her income tax liability. However, IRC §63(c)(6)(B) provides that the standard deduction of a nonresident alien individual is zero.

## NONRESIDENT ALIEN EMPLOYEES AND THE MAKING WORK PAY TAX CREDIT

Section §36A was added to the Internal Revenue Code by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5). It provides an income tax credit for eligible individuals for 2009 and 2010. An eligible individual for purposes of §36A does not include a nonresident alien. Taxpayers' reduced liability under §36A is implemented through revised income tax withholding tables that take the Making Work Pay Tax Credit into account.

## REASON FOR CHANGE IN WITHHOLDING PROCEDURES FOR NONRESIDENT ALIEN EMPLOYEES

The modified rules provide for



withholding that more closely approximates their actual income tax liability because it offsets the effects of both the standard deduction and Making Work Pay Tax Credit as reflected in the withholding tables.

## WITHHOLDING RULES IN EFFECT FOR NONRESIDENT ALIEN EMPLOYEES

Beginning with wages paid on or after January 1, 2010, employers are required to calculate income tax withholding on nonresident alien employees' wages by making two modifications rather

than the one modification described in Notice 2005-76:

- First, employers need to add an amount to wages before determining withholding under the wage bracket or percentage method in order to offset the standard deduction built into the withholding tables.
- Second, employers need to determine an additional amount of withholding from a separate table applicable only to nonresident alien employees to offset the effect of the Making Work Pay Tax Credit built into the withholding tables.

*Anne S. Lewis, Esq., is Managing Editor of PAYROLL CURRENTLY for APA.*

**STEPS TO FOLLOW**

To figure how much income tax to withhold from the wages paid to a nonresident alien employee performing services in the United States, use the following steps:

**Step 1.** Add to the wages paid to the nonresident alien employee for the payroll period the amount shown in the chart for the applicable payroll period.

**Step 2.** Use the amount figures in Step 1 and the number of withholding allowances claimed (generally limited to one allowance) to figure income tax withholding using the tables that are used to figure income tax withholding for all other employees. If you use the percentage method tables in Circular E, reduce the amount figured

in Step 1 by the value of withholding allowances (shown below) and use that reduced amount to figure income

Payroll Period	Add Additional
Weekly	\$39.42
Biweekly	78.85
Semimonthly	85.42
Monthly	170.83
Quarterly	512.50
Semiannually	1,025.00
Annually	2,050.00
Daily or Miscellaneous	7.88 (each day of the payroll period)

tax withholding from the percentage method table. If you use the wage bracket tables, use the amount figured in Step 1 to figure income tax withholding using the wage bracket tables.

**Step 3.** Use the amount you figured in Step 1 after subtracting the value of withholding allowances claimed (generally limited to one allowance) to figure an amount from the Tables for Withholding Adjustment for Nonresident Aliens for Wages Paid in 2010 in Circular E.

**Step 4.** Add the amounts you figured in Steps 2 and 3. The total is the amount of income tax to withhold from the nonresident alien employee's wages for the payroll period. ■

# USCIS Reports on E-Verify Program Enhancements for Foreign-Born Citizens

BY ANNE S. LEWIS, ESQ.

In response to a September 2007 E-Verify program evaluation that found foreign-born citizens were more likely to receive mismatches, known as Tentative Non-confirmations (TNCs), than U.S.-born citizens, USCIS has pursued a number of initiatives aimed at those individuals [[www.uscis.gov/files/article/e-verify\\_passport\\_4Mar09.pdf](http://www.uscis.gov/files/article/e-verify_passport_4Mar09.pdf)].

**Department of State passport records.** Most recently, USCIS has incorporated Department of State passport data into the E-Verify program. If the Department of Homeland Security or the Social Security Administration (SSA) is unable to immediately confirm

a citizen's work eligibility, USCIS can now check State Department records prior to issuing a TNC. If citizenship information provided on Form I-9 (*Employment Eligibility Verification*) matches those records, E-Verify will now seamlessly confirm the individual's work authorization.

**USCIS naturalization databases.** Previously, USCIS added an automated check against USCIS naturalization databases for all newly hired employees claiming U.S. citizenship who were not automatically employment authorized during the SSA check. This enhancement has reduced E-Verify U.S. citizenship-related TNCs by 39%.

**Problem resolution by phone.**



Additionally, foreign-born U.S. citizens who receive TNCs may call USCIS directly, rather than visiting an SSA office to resolve their cases. More than 60% of foreign-born U.S. citizens who have received a TNC have chosen this option and, of those, more than 90% have received a final determination of "work-authorized" over the telephone. ■

# Paycard News From Montana, New York, and Oklahoma

BY LAURA LOUGH, ESQ.

Three states have recently issued guidance for employers on electronic wage payments, including paycards.

## MONTANA

The Montana Department of Labor and Industry (DOLI) has answered frequently asked questions regarding electronic wage payments. These FAQs include the DOLI's new enforcement position on paycards.

An employer may use a paycard to pay employees' wages provided all of the following conditions are met:

- The employee has the option to receive the full amount of the wages via a check (or cash, if the employer prefers), without requiring that the employee take extraordinary steps to obtain the check;
- The employee consents to the use of the debit card;
- The employer provides a clear understandable guideline identifying the charges associated with the use of the debit card;
- The full amount of the wages can be accessed, in cash, without incurring a fee in the initial withdrawal; and
- The employee receives (either in writing or electronically) an itemized list of the deductions and authorized withholdings from the wages.

## NEW YORK

The New York State Department of Labor (DOL) has issued a letter stating its opinion that the use of payroll debit cards for the payment of wages is permissible under New York labor law under certain conditions. The employee must not be charged fees to access wages. Voluntary consent is required from nonexempt employees, and consent must not be a condition of employment. This letter was sent to the Paycard Subcommittee of APA's Government Affairs Task Force [NYDOL Ltr., 10-29-09].

## OKLAHOMA

The Oklahoma Attorney General (OAG) has issued a formal opinion regarding the payment of wages by electronic means [OAG Op. 09-31, 11-17-09]. The opinion includes a discussion of the applicability of federal law, the use of paycards, mandating direct deposit, and the electronic delivery of pay statements (paystubs).



*Federal law.* According to the OAG, the payment of wages by electronic means is governed by the federal Electronic Fund Transfer Act (EFTA; see 15 USC §§1693—1693r), along with regulations implementing the EFTA (12 C.F.R. §§205-205.18) and the Official Staff interpretations supplementing Regulation E (12 C.F.R. part 205, supp. I). The EFTA pre-empts state law governing consumer electronic fund transfers to the extent that those laws are inconsistent with the EFTA.

*Paycards.* An employer cannot require the use of payroll debit cards. The employee can choose to use a payroll debit card, but it must be voluntary. Employees cannot be charged a fee to receive wages by electronic means.

*Direct deposit.* An employer may require employees to use direct deposit for the payment of wages. However, the employer cannot require that a certain bank be used. If the employer's policy only allows employees to receive direct deposit at a certain bank, then the employer cannot require direct deposit and must offer the option of cash or check.

*Electronic pay statements.* Pay statements do not have to be written or printed. They can be in electronic form as long as the method of delivery places no burden on the employee in order to receive the statement. The form the delivery takes depends on the capability of the employee to receive it. E-mailing a pay statement is permissible as long as the employee provides an e-mail address. "But merely placing the statement on a website where the employee has to retrieve it is not permissible," explained the OAG. ■



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