



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

October 1, 2009

William Dunn
American Payroll Association
1601 18th St., NW, Suite 1
Washington D.C. 20009-2505

RE: Electronic Payment: Direct Deposit & Payroll Debit Cards

Dear Mr. Dunn:

This is in response to your request for an opinion from the Department of Labor and Industry regarding electronic payment programs.

Under Pennsylvania law, payment by direct deposit and debit card is permissible. However, an employee must agree to one of these forms of payment. It appears that an employee may not be compelled to accept payment through direct deposit or a debit card.

The Pennsylvania Banking Code allows payment of salary "by credit to an account in a bank, credit union or other financial institution authorized to accept deposits or payments designated by the recipient of such payment if the recipient has requested such method of payment in writing." 7 P.S. § 6121. However, the recipient must enter a written agreement authorizing this payment and may withdraw this authorization. 7 P.S. § 6122.

Section 3(a) of the Wage Payment & Collection Law (WPCL) allows deductions permitted or mandated by law (*e.g.*, taxes), or authorized in the regulations of the WPCL. 43 P.S. § 260.3(a); 34 Pa. Code § 9.1. In general, wage deductions are only authorized if they are for the convenience of the employee(s). 34 Pa. Code § 9.1. Any deduction of fees associated with an employees use of the payroll debt card must be for the benefit of the employees. The list of authorized deductions does allow for a non-specifically listed deduction that is authorized in writing by employees and is

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proper and in conformity with the intent and purpose of the Pennsylvania Wage Payment and Collection Law. 34 Pa. Code § 9.1(13). In order to fall under section 9.1(13), the deduction of the fees would have to be authorized in writing by the employee in conformity with the intent and purpose of the WPCL. The deduction must be reasonable and cover only the costs associated with use of the card.

Section 4 of the WPCL requires an employer to notify employees at the time of hiring of the time and place of payment and the rate of pay and the amount of any fringe benefits or wage supplements to be paid to the employee, a third party or a fund for the benefit of the employee and any change concerning any of these items before any change. The notification can be made by posting this information and keeping it posted conspicuously at the employer's place of business. 43 P.S. § 260.4.

Under the Pennsylvania Minimum Wage Act ("MWA"), employers are required to provide each employee with a statement with every payment of wages, which lists: hours worked, rates paid, gross wages, allowances claimed as part of the minimum wage (if any), deductions, and net wages. 34 Pa. Code § 231.36. If an employer desires to utilize electronic direct deposit statements, the employer must provide all employees access to a computer and the ability to print copies of their statements for their personal use. 34 Pa. Code § 231.36. Employer's must also keep proper records of the deductions and wages which is accessible to the Bureau of Labor Law Compliance which enforces this law. 43 P.S. § 260.8. These requirements are also contained in MWA. 43 P.S. §§ 333.107, 333.108; 34 Pa. Code § 231.31.

This opinion does not constitute an adjudication or binding norm. Further, the Bureau may revise this opinion and prosecute cases based upon any future judicial interpretations. In addition, there may be additional state or federal statutes, such as the Fair Labor Standards Act, or other legal issues that may apply to your question. Information about the WPCL & MWA is available on the Labor & industry website: www.dli.state.pa.us (Keywords: "Labor Law Compliance" then "Minimum Wage Act" or Wage Payment and Collection Law").

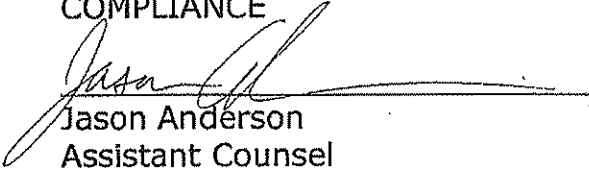
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FOR THE BUREAU OF LABOR LAW
COMPLIANCE



Jason Anderson
Assistant Counsel

cc: A. Robert Risaliti, Director, Bureau of Labor Law Compliance