



American Payroll Association

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Statement in Support of New York A. 6771-A and S. 5208-A

The American Payroll Association (APA) appreciates the opportunity to voice its strong support for A.6771-A/S.5208-A.

A.6771-A/S.5208-A would provide clarity on the use of payroll cards in the State of New York. While the legislation goes further than the APA would like in a couple of respects,¹ it would ensure that employees are provided important consumer protections, including full and free access to their wages, and provide employers with clear guidance regarding their responsibilities under the Labor Law. Moreover, the legislation directly addresses concerns raised about payroll cards by consumer groups and unions. Importantly, A.6771-A/S.5208-A would allow employers and payroll card providers to continue offering payroll cards in the State of New York without imposing unduly burdensome or prohibitive requirements and, in so doing, would benefit thousands of New York workers who may not otherwise be able to enjoy the advantages of electronic wage payment programs. For these reasons, APA supports the legislation.

About the American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. We have more than 1,000 members in the State of New York, and many of our members who are located outside of New York process payroll for employees who work in the state.

The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. The APA, through its Government Relations Task Force, has spent more than a decade monitoring the increasing use of payroll cards in the workplace. We have advocated for sensible regulation of payroll cards to ensure that employers are able to offer this

¹ The APA has consistently opposed legislative and regulatory proposals requiring free ATM withdrawals or prohibiting inactivity fees on payroll card accounts. The wage and hour laws are designed to provide employees with the full and timely payment of wages. Full access to wages cannot be accomplished at ATMs since they typically permit withdrawals in \$10 and \$20 increments only. Inactivity fees are easily avoidable and only come into play after wage loads and other activity in the account have stopped. While employers may wish to provide programs that go beyond full and free access to wages, the APA generally opposes requiring employers to provide one group of employees with free discretionary banking services (and be subject to penalties for failing to do so) simply because the employees have chosen to receive their wages through a payroll card account.

beneficial payment method to their employees and that employees can use payroll cards to their best advantage. In this regard, the APA has paid close attention to and provided significant input on the development of New York's policy toward payroll cards and is pleased to now support A.6771-A/S.5208-A.

New York's Wage Payment Law and A. 6771-A/S. 5208-A

Payroll cards are permitted in the State of New York under section 192 of the Labor Law.² This section permits the payment of wages to a bank or other financial institution with the employee's written authorization. The Labor Law also requires the timely payment of full wages and limits the circumstances under which an employer may take deductions from wages.³ Just how these provisions apply in the payroll card context is not always clear, however.

The Labor Commissioner has provided some guidance in this area through counsel opinion letters, but these letters are subject to various interpretations and do not constitute formal statements of law. Regulations promulgated by the Labor Commissioner addressing payroll cards and other methods of wage payment were recently revoked by the New York State Industrial Board of Appeals on the grounds that they exceeded the Labor Commissioner's delegated authority and encroached on the jurisdiction of banking and financial service regulators.⁴ The Board's determination is currently on appeal, which could take several months or longer to resolve. In the meantime, the issue of this State's public policy regarding payroll cards is back before the legislature, where the Industrial Board of Appeals properly decided it belongs. New York courts have repeatedly held that "it is the province of the people's elected representatives, rather than appointed administrators, to resolve difficult social problems by making choices among competing ends."⁵

Employers and Their Employees Derive Valuable Benefits From Payroll Cards

A payroll card is a reloadable prepaid card issued to an employee through the employer that allows the employee to receive and access wages from an account established on behalf of the employee at a financial institution. Each payday, the employee's net wages are deposited into his or her payroll card account. At that point, ownership of the funds transfers to the employee. The employee can then use the payroll card to access his or her full net wages in cash or to make purchases and pay bills in person, online, or over the telephone.

² See, decision of the New York State Industrial Board of Appeals in *Matter of Global Cash Card, Inc. v. Commissioner of Labor* (Dkt. No. PR-16-0120); See also, New York State Department of Labor, Counsel Opinion Letter dated October 29, 2009.

³ N.Y. Labor Law §§ 191, *et seq.*

⁴ *Matter of Global Cash Card, Inc. v. Commissioner of Labor* (Dkt. No. PR-16-0120). Among other things, the Board noted that "the issue of payment of wages by payroll debit card is a matter of public concern being debated within the legislature."

⁵ See, *e.g.*, *Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v New York City Dept. of Health & Mental Hygiene*, 23 NY3d 681, 697 (2015) (citation omitted).

Payroll cards allow employers to deliver, and employees to receive, wages in a reliable and timely manner. This is particularly important when employees work offsite or are away from the workplace, and when severe weather conditions and natural disasters like Superstorm Sandy impede the delivery of paper paychecks. Employers also enjoy administrative efficiencies when using electronic payment methods and, in many instances, cost savings.

Employees benefit from increased security, convenience, and cost savings. Payroll cards are often used by employees who have limited access to traditional financial services. According to a 2015 study by the Federal Deposit Insurance Corporation (FDIC), 31.8% of all households in the State of New York are either unbanked (having no checking or savings account) or underbanked (having a checking or savings account, but still reliant on alternative financial services such as check cashers).⁶ Direct deposit is not an option for many of these workers who, without payroll cards, often rely on paper paychecks. In New York, check cashing services can charge fees up to 2.03% of an employee's paycheck.⁷ Even when employees are provided a means of cashing their paychecks without charge, underserved employees incur costs when purchasing money orders to pay their bills or travelling to the payment location to pay in cash. These workers also risk loss or theft carrying around their wages in cash. Employees with payroll cards are able to avoid these costs and risks.

A.6771-A/S.5208-A Address Concerns Raised About Payroll Cards

1. Payroll Cards Must Be Offered on a Voluntary Basis Only

Consumer advocates and unions often claim that some employees are not given a true choice as to whether to receive a payroll card. Currently, federal law prohibits employers from requiring their employees to receive wages via a payroll card account. A.6771-A/S.5208-A would go further by making it abundantly clear that paychecks (or cash) are the default method of paying wages in New York. Wages could only be paid to a payroll card account, or any other account for that matter, if the employee voluntarily authorizes the payment method in advance. Consent to a payroll card account could not be made a condition of hire or continued employment. Moreover, once a selection is made, the employee would be able to change his or her mind at any time.

2. Employees Must Be Provided Full and Free Access to Their Wages

Another misconception is that employees cannot access their wages from a payroll card account without incurring fees. Today, most if not all payroll cards are branded, meaning that they bear the logo of a major payment brand (i.e., Visa[®] or MasterCard[®]). Employees with branded payroll cards may withdraw up to their full net wages each pay period from a teller at any financial institution location that is a member of the payment brand, not just the financial institution that

⁶ FDIC, National Survey of Unbanked and Underbanked Households, Appendix A-7 (2015).

⁷ New York State Department of Financial Services, Industry Letter: Annual Maximum Check Cashier Fee (February 13, 2017).

issued the card. This feature provides Visa cardholders with free cash access to their full wages at more than 90,000 branch locations nationwide including more than 5,400 branch locations in the State of New York. Alternatively, employees may store some or all of their wages in the payroll card account and use their cards to make purchases in person or over the telephone. A.6771-A/S.5208-A would prohibit fees for point-of-sale purchase transactions. Many merchants provide cash back at the point-of-sale without charge.

A.6771-A/S.5208-A would go beyond requiring that employees be provided a means of accessing their full wages without cost by also requiring one free in-network ATM withdrawal each week. This provision would set New York apart from virtually every other state. In May, Pennsylvania became the only state to require free ATM withdrawals on payroll card accounts in its wage payment statutes or regulations. Pennsylvania now requires one free in-network ATM withdrawal each pay period, while A.6771-A/S.5208-A would require one free withdrawal each week.⁸ A.6771-A/S.5208-A also would require that each payroll card program be associated with a network of ATMs that assures the availability of a substantial number of in-network ATMs in the state.

3. Fees Must Be Limited and Fully Disclosed

Opponents to A. 6771-A/S.5208-A claim that payroll card accounts carry hidden fees and that workers are unfairly charged to access their wages. Research on the issue reveals that the opposite is true. Studies, including a 2014 report by Attorney General Schneiderman, show that many employees use payroll cards without ever incurring fees.⁹ Indeed, setting aside fees for overdrafts which are prohibited by A.6771-A/S.5208-A, the only data in the Attorney General's Report that could possibly be described a negative was data suggesting that the average fees paid by one group of employees for an entire year was \$14 to \$15 dollars.¹⁰ This works out to \$1.25 per month, or approximately one monthly ATM transaction fee (provided for free under the proposed legislation), and is far less than the fees incurred by workers in New York who rely on check cashing services to access their wages.

A.6771-A/S.5208-A also would expressly prohibit fees for participating in a payroll card program, transferring wages from the employer to a payroll card account, and maintaining a payroll card account. In addition, and as discussed above, the legislation would require two separate methods of withdrawing wages in cash without charge and would prohibit fees for purchases at the point-of-sale. Under A.6771-A/S.5208-A, employees would be provided at least two methods of checking their account balances without cost (using an automated telephone system and one other electronic means); unlimited no-cost access to electronic transaction

⁸ Both the Pennsylvania statute and A.6771-A/S.5108-A have special rules for employees paid more frequently than weekly.

⁹ See, e.g., S. Whilshusen, R. Hunt, J. van Opstal, and R. Schneider, *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis* (Federal Reserve Bank of Philadelphia Payment Cards Center, August 2012); Office of the New York State Attorney General, *Pinched by Plastic* (June 12, 2014).

¹⁰ According to the Attorney General's Report, fewer than 5,000 employees of one employer paid almost \$70,000 in fees over a one year period. In other words, the average fee paid by these employees for the entire year was \$14 to \$15 dollars.

histories showing all deposits, withdrawals, deductions or charges to the account by any entity; and one free written transaction history each month without cost upon employee request.

A.6771-A/S.5208-A would also require fee transparency. When offering employees a payroll card option, employers would be required to disclose all fees that may be assessed by the card issuer and to notify employees that third parties may charge additional fees. This is in addition to the fee disclosures that already must be provided by the card issuer under federal banking law.

A. 6771-A and S. 5208-A Would Require Additional Consumer Protections

Today, financial institutions that offer payroll card accounts must provide important consumer protections on those accounts. The accounts are not “unchecked” or unregulated. Among other things, federal Regulation E requires disclosure of terms and conditions including fees, access to account information, dispute resolution procedures, limited liability for unauthorized card use, and advance notice of changes in the terms and conditions of the account.¹¹ The Consumer Financial Protection Bureau’s rule on Prepaid Accounts will provide additional protections for payroll card accounts when it goes into effect in 2018.

A.6771-A/S.5208-A would go beyond existing banking law protections and require employers to take a variety of steps to ensure that their employees are able to use their payroll cards to their best advantage. For example, when offering employees a payroll card account, employers would be required to provide employees with information about all of their wage payment options including the terms and conditions of the payroll card account. The disclosures would need to explain the methods available for accessing wages and checking the account balance without cost, and to list all fees that may be assessed by the card issuer. As discussed above, employers would be required to offer programs that provide two methods of checking account balances without cost and access to electronic and written transaction histories. Finally, wages credited to a payroll card account would need to be insured by the FDIC or National Credit Union Association (NCUA), and the account could not be linked to any form of credit.

Conclusion

A.6771-A/S.5208-A require important consumer protections on payroll card accounts. They address the concerns expressed by consumer advocates and unions, but do so without imposing prohibitive burdens on employers and payroll card providers. The legislation would allow employees to select the payment method offered by their employer that best meets their individual preferences, cash access needs, and banking status. For these reasons, the APA supports A.6771-A/S.5208-A and urges you to do so as well.

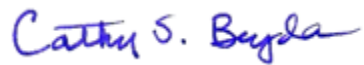
¹¹ Under Regulation E, the issuer is responsible for providing these protections on all covered accounts, including payroll card accounts. *See*, 12 C.F.R. Part 1005.

Please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (408-973-8215) with any questions.

Sincerely,



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