American Payroll Association

Government Relations • Washington, DC

Statement in Opposition to HB 5315,
An Act Allowing Employers to Pay Wages Using Payroll Cards

The American Payroll Association (APA)[1] appreciates the opportunity to submit the following statement in opposition to House Bill 5315 (HB 5315). The APA considers payroll cards to be a beneficial payment method[2] and supports the enactment of legislation expressly authorizing their use in Connecticut. It is essential, however, that any such legislation be carefully drafted to accomplish the purposes of the wage payment statutes without imposing unnecessary and prohibitive burdens on employers. In this regard, the APA submitted written testimony earlier this year expressing support for HB 5315 but only if amended. We were concerned with a provision of HB 5315 that would require employers who offer payroll cards to honor their employees' requests to be paid in cash. We emphasized that the APA would oppose any requirements that unnecessarily encumber the use of payroll cards in Connecticut or require employers to provide free banking services to their employees.

With approximately one week left in the legislative session, the provision requiring employers to make wages available in cash still remains in HB 5315. Fee provisions that were identified as a concern to our members also remain in the bill. In addition, we have heard from several sources that amendments to the bill are being discussed, at least some of which would unnecessarily encumber the use of payroll cards in Connecticut. **For these reasons and as discussed more fully below, we oppose HB 5315.**

Employers Should Not Be Required to Pay Wages in Cash

Under HB 5315, employers who offer payroll cards would be required to notify employees that they have "the option of receiving wages, salary or other compensation through any means allowed pursuant to section 31-71b of the general statutes, as amended by this act." (See Section 1, paragraph (b) of HB 5315). Section 31-71b of the general statutes allows, but does not require, employers to compensate their employees using cash. Yet, if HB 5315 is enacted in its current form employers who offer payroll cards would be required to honor an employee's request to be paid in cash.

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[1] The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. 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. In addition, the APA's Government Affairs Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations while minimizing the administrative burden on government, employers, and individual workers.

[2] Many well respected policymakers, consumer advocates and government regulators agree that payroll cards can be a very beneficial option for underserved workers who often are forced to rely on expensive alternative financial services, such as check cashers, to access their wages. As an example, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, recently published an Op-Ed emphasizing that "Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation."

Cash is a terribly impractical method of wage payment and has not been in wide use for nearly 100 years. Cash presents a risk of loss and theft for both employers and their employees. Moreover, the labor costs required to handle, count and distribute wages in cash is substantial. Indeed, ***cash is so cost prohibitive that employers are likely to stop offering payroll cards if this requirement in codified***. Such a result would be unfortunate, given that payroll cards are one of the least expensive and safest ways for employees to receive wages. If HB 5315 is to move forward, this requirement must be removed.[3]

SB 5315 Appropriately Requires Full and Free Access to Wages

HB 5315 amends the Connecticut's wage payment statutes and, as such, is designed to ensure that employees who receive their wages on a payroll card have full and free access to their wages. To this end, the bill would require that employees be allowed to make at least one withdrawal or transfer each pay period for any amount up to the employee's full wages for the pay period, and would prohibit fees for specified services that are essential to accessing those wages. These services include issuing the payroll card, transferring wages to the payroll card, maintaining the payroll card account and closing the payroll card account. HB 5315 would also require employers to provide their employees with a means of checking their account balances through an automated telephone system and electronically without cost.

The above provisions are consistent with the best practices that the APA advocates for our members. They ensure that employees have access to their full wages without cost and are provided with the information and tools necessary for them to decide whether to receive a payroll card and, if so, how to use the payroll card to their best advantage. As previously mentioned, the APA would oppose any amendments that go beyond these requirements and require employers or program managers to provide employees with free banking services (such as multiple free withdrawals each pay period or withdrawals at specified locations).

SB 5315's Fee Prohibitions Go Too Far

In addition to the fee prohibitions discussed above, SB 5315 would also prohibit fees for: (a) declined transactions, (b) account inactivity or dormancy, and (c) "other similar costs for the maintenance or use of a payroll card." (See section 1, paragraphs (d)(1) and (g) of HB 5315). These fee prohibitions go beyond requiring full and free access to wages and would require employers to absorb the discretionary banking costs of one group of employees (i.e., those who elect to receive wages using a payroll card). **Similar requirements are not imposed on any other method of wage payment.**

Financial institutions incur costs for providing the services associated with these fees which they, no doubt, would pass onto employers. Consider declined transactions. Each time a transfer is declined, the financial institution is charged fees by both the network and the processor.[4] For example, one financial institution reported that it pays more than 50 cents each time a transaction is denied at an ATM. Under HB 5315, the financial institution would be required to pay these fees itself or pass them onto the employer.[5]

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[3] This can be accomplished by replacing paragraph (b) in its entirely with the following language:

(b) An employer may offer the use of payroll cads to deliver wages, salary , or other compensation to employees, provided:

(1) Each employee also is given both the option of receiving wages by direct deposit and the option of receiving a negotiable check, and

(2) The employee consents, in writing or electronically, to the payment of wages using a payroll card.

[4] These fees may vary depending on the particular network and processor involved.

[5] Under HB 5315, the employer ultimately will be responsible for ensuring that the employee is not charged the fee.

Declined transaction fees are easily avoidable, however, since employees always have access to their current balance information. This would be required by HB 5315. Indeed, all programs provide employees with at least one free means of checking their account balance in real time over the telephone (using an interactive voice response system) and/or using their mobile devices (mobile apps, text alerts and two-way texting) and/or over the internet (email alerts and cardholder portal). Requiring employers to absorb the cost of declined transactions provides employees with little or no incentive to utilize the tools provided to them to avoid fees and promote healthy financial decision-making. It does just the opposite.

Maintaining an inactive payroll card account also can be expensive as the financial institution must continue to satisfy its banking law obligations. The employer and/or financial institution should not be responsible for the cost of maintaining a dormant account particularly where the employee has other options. An employee who stops receiving wages on his or her payroll card always has the option of using the card until all funds are depleted or closing the account and receiving the remaining funds. If the card is portable, the employee can add additional funds to the account and continue to use it as a transaction account. Instead of taking advantage of these options, however, some employees simply abandon their payroll cards with small account balances remaining.

Finally, HB 5315 would prohibit the employer and payroll card issuer from deducting "other similar costs for the maintenance or use of a payroll card." This provision is extremely vague and provides employers (as well and those responsible for enforcing the statute) with no guidance as to what is needed to comply. We are concerned that this provision will be used to argue that any fee incurred when using a payroll card, regardless of circumstance, is prohibited.

The Limitations on Employer Liability Should Be Clarified

HB 5315 governs the employment relationship and, more specifically, the payment of wages during that relationship. As such, the bill appropriately limits the paragraph on fees to the period of employment and 60 days thereafter. The language limiting the duration of the fee provisions should be moved to the beginning of the paragraph to make clear that it applies to the entire paragraph, as follows:

> (d)(1) During the employees period of employment with the employer and for sixty days after the termination of that relationship by either party, neither the employer nor the payroll card issuer shall deduct a fee from the wages, salary or other compensation ~~on an employee's payroll card or~~ in the ~~an~~ employee's payroll card account for: (A) issuing a payroll card; (B) transferring wages, salary or other compensation onto the payroll card; (C) maintaining a payroll card account; (D) providing one replacement card per calendar year upon the employee's request; (E) closing the payroll card account; or (F) a low balance ~~or declined transactions; (G) inactivity or dormancy of the payroll card account; or (H) other similar costs for the maintenance or use of a payroll card account, during the employee's period of employment with the employer and for sixty days after the employee's employment with the employer has been terminated by either party~~.

Similar language limiting employer liability should be added to paragraph (g), which prohibits fees for overdrafts and, again, prohibits fees for declined transactions. As discussed above, any prohibition on fees for declined transactions should be removed entirely.

The Annual Notice of Terms and Conditions Is Burdensome as Drafted

HB 5315 would appropriately require employers to provide their employees with clear and conspicuous notice of the terms and conditions of the payroll card program, as well as advance

notice of any changes in those terms and conditions. It would also require employers to provide employees with an additional annual notice containing this information.

While access to this information is important, requiring employers to distribute the information annually is unnecessary and would impose an administrative and financial burden on employers. This is because most (if not all) programs already make this information available to employees online, and few employees are likely to look at a notice set once a year on an arbitrary date established by the employer or program manager. It would be more helpful and less burdensome to require employers to provide access to the terms and conditions on an ongoing basis (e.g., by posting the information on a website) and to distribute the information directly to the employee upon request.

Notice of Changes in Terms and Conditions Should be Consistent With Federal Law

Finally, HB 5315 would require that employers provide written notice of any change in the terms and conditions of the payroll card account at least 30 days prior to the effective date of the change (See section 1, paragraph (k) of HB 5315). We agree with the intent of the provision but are concerned that, as written, it will be difficult for employers to comply with this requirement. **This is because federal banking law requires financial institutions to provide notice of changes in terms and conditions 21 days before the change takes effect.**[6] Employers may not be able to comply with a 30-day requirement if they have not yet been apprised by the financial institution of future changes. For this reason, we recommend that this provision be revised to require 21 days advance notice of any changes.

Conclusion

The APA remains remain steadfast in our belief that workers and businesses should be permitted to offer payroll cards on the same terms as other methods of wage payment, unhindered by unnecessary and unduly burdensome requirements. We oppose HB 5315 because it would encumber the use of payroll cards to the detriment of employers and employees alike.

We would welcome the opportunity to discuss the above issues with you. In this regard, please feel free to contact Cathy Beyda (650-32-1824) or Bill Dunn (202-232-6889) with any questions or concerns that you may have.

Sincerely,

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[6] 12 CFR 1005.8(a) (Regulation E).