



# American Payroll Association

Government Relations • Washington, DC

House Committee on Consumer Protection and Commerce  
February 19, 2014 at 3:00 PM  
State Capitol Conference Room 325

## Written Testimony for House Bill 1814, HD1

TO: The Honorable Angus L.K. McKelvey, Chair  
The Honorable Derek S.K. Kawakami, Vice Chair  
Members of Committee

The American Payroll Association ([APA](#))<sup>1</sup> appreciates the opportunity to express its deep concern for H.B. 1814, HD1. We thank the House Committee on Labor & Public Employment for amending the bill to authorize the use of payroll cards in Hawaii. We remain concerned, however, that the bill's restrictive provisions requiring employers to absorb their employees' discretionary banking costs would continue to serve as a *de facto* ban on this beneficial wage payment method. In addition to our testimony below, please find a legislative analysis attached hereto as Exhibit A and a proposed House Draft 2 as Exhibit B.

***No employee should have to pay to receive his or her wages.*** Unfortunately, however, many employees are forced to do just that because they have little or no access to mainstream financial services. These underserved workers spend as much as \$40,000 in check cashing fees over a life time.<sup>2</sup> Many well respected policymakers, consumer advocates and government regulators agree that payroll cards offer a valuable solution to these workers. For example, earlier this month, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, 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."

According to the FDIC, 3.8% of all households in Hawaii are unbanked (having no checking or savings account) and another 20% of households in Hawaii are under-banked (having a checking or savings account, but still reliant on alternative financial services such as check cashing).<sup>3</sup>

Check cashers in Hawaii may charge employees five percent of their paycheck<sup>4</sup> – or, \$754 over the course of the year. This is enough to pay for 335 elementary school lunches.<sup>5</sup>

<sup>1</sup> 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.

<sup>2</sup> Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail; Banking Infrastructure and Its Wealth-Building Potential* (January 2008).

<sup>3</sup> 2011 FDIC National Survey of Unbanked and Underbanked Households.

<sup>4</sup> See. Hawaii Rev. Stat. § 480F-3 allowing check cashers to charge fees equal to 5% of the face amount of the check or \$5, whichever is greater.

**Branded payroll cards guarantee participating workers a means of accessing their full wages in cash each pay period without cost.** Branded payroll cards (i.e., those bearing the logo of a major payment brand) can be used anywhere that the payment brand is accepted. In fact, **employees can take their payroll card to any financial institution that is a member of the payment brand – not just the financial institution that issued the card – and receive their full wages from the teller at least once each pay period without cost.**<sup>6</sup> In Hawaii, Visa has 264 member bank branches locations<sup>7</sup> and 60 member credit union locations. MasterCard has more than 300 member bank branch locations in the state.<sup>8</sup>

This functionality allows employees to treat their payroll cards like plastic paychecks and cash out their full net wages each pay period without cost. Employees can choose instead to leave some or all of their wages in the card account and use the card to make point-of-sale purchases, receive cash back from point-of-sale transactions, make purchases by mail, phone or Internet and pay bills online. Most of these are things that underserved employees cannot do when they only carry cash. Employees also are provided with many ways of accessing their account balances without fees and with budgeting tools such as mobile applications and low-balance text alerts.

**Payroll cards are already subject to a number of consumer protections.** Payroll cards are subject to federal [Regulation E](#)<sup>9</sup>, which limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time. Regulation E also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. In addition, it requires card issuers to make account information and transaction histories available to employees. Finally, although overdrafts on payroll cards are uncommon, Regulation E prohibits fees for overdrafts without prior consent.

In addition to the above listed protections and those imposed under Hawaii's wage and hour laws, all of the benefits and protections offered on debit products by the major payment brands also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

**Employers are likely to stop offering payroll cards if HB 1814, HD1 is enacted in its current form.** This is because employers would be required to pay any and all costs incurred by employees using payroll cards even though the fees were not necessarily incurred to access wages and were easily avoidable. Employers are not required to absorb their employees' discretionary expenses with respect to any other payment method. In fact, we are concerned that the payment of these costs would constitute the payment of a personal expense on behalf of employees which would need to be reported on the employees' W-2 forms and be taxable as wages. By comparison, if an employee fails to take advantage of the free methods provided to cash his or her paycheck but instead voluntarily incurs fees at a check cashing establishment, the employer would not be obligated to reimburse the employee such fees as taxable wages.

If employers stop offering payroll cards in Hawaii, thousands of employees who currently benefit from payroll cards would face the prospect of returning to the inconvenience of paper paychecks and paying high fees at check cashing stores. *To ensure that this does not happen, we recommend that the following revisions be made to HB 1814, HD1:*

1. **HB 1814 should be revised to ensure full and free access to wages without requiring employers to pay the costs associated with discretionary card use.** This means that

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<sup>5</sup> According to the Hawaii Department of Education's website, school lunches cost \$2.25 for students in grades 9-12. Hawaii schools are required to have 180 instructional days per year.

<sup>6</sup> This includes more than 90,000 financial institution locations nationwide.

<sup>7</sup> Including American Savings Bank, Bank of Hawaii, Central Pacific Bank, First Hawaii and Hawaii National Bank.

<sup>8</sup> Some of these locations accept both Visa and MasterCard.

<sup>9</sup> Regulation E implements the federal Electronic Funds Transfer Act and is located at 12 CFR Part 1005.

employees must be able to withdraw their full net pay, without cost, at least once each pay period. Employers should be prohibited from passing on to their employees any of their own costs in implementing or maintaining the payroll card program.

2. **Appropriate disclosures should be required to ensure that employees can make informed decisions regarding their payment options.** The disclosures also should ensure that employees who select the payroll card are provided with information necessary for them to use their cards to their best advantage and in a manner that promotes financial wellbeing.<sup>10</sup>
3. **The bill should be limited to payroll cards; other types “electronic payment cards” should be removed.** Automated teller machine cards and debit cards are, by definition, connected to an employee’s checking account. Unlike [payroll cards](#),<sup>11</sup> they are not issued or distributed through the employer channel but are components of traditional direct deposit. To avoid confusion, “debit card” and “automated teller machine card” should be removed from the bill. It is not clear what types of cards are covered by “similar electronic payment card.”
4. **The bill should be revised to require that payroll cards be branded.** This will help to ensure that the cards offered by employers are widely accepted and that employees are provided several locations to access their wages in cash for free.
5. **The employer’s obligations under HB 1814 must be clarified.** Employers should be required to select programs that limit employee liability for fraudulent use and provide access to account information and transaction histories. For privacy reasons, however, employers cannot provide these services directly. HB 1814 should be revised to clarify the employer’s obligations.

### **Conclusion**

We would welcome the opportunity discuss the above issues with you further. In this regard, please feel free to contact Cathy Beyda (650-320-1824) or Bill Dunn (202-232-6889) with any questions or concerns that you may have.

Sincerely,



Cathy Beyda, Esq.  
American Payroll Association  
Chair, Paycard Subcommittee, Government Affairs Task Force



William Dunn, CPP  
American Payroll Association  
Director of Government Relations

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<sup>10</sup> Specifically, we recommend revising HB 1814 to require employers to provide notice of the following: (1) all of the employee’s wage payment options, (2) the terms and conditions of the payroll card program, including any fees that may be assessed by the card issuer; (3) the method(s) available to the employee to access his or her wages from the card without cost, (4) the methods available to employees for checking the balance in the payroll card account without cost; and (5) a statement as to whether third parties may assess additional fees (e.g., out-of-network ATM provider, telecom carrier if opt-in to text alerts, etc.).

<sup>11</sup> Federal banking law defines a “payroll card account” as “an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, ...” Regulation E, 12 CFR 1005.2(b)(2).