



American Payroll Association

Government Relations • Washington, DC

February 13, 2012

STATEMENT IN SUPPORT OF SENATE BILL 341, WITH CHANGES

The American Payroll Association (APA) submits the following statement in support of SB 341, with minor modifications. If enacted, SB 341 would amend New Hampshire Revised Statutes section 275:43 by removing the requirement that employers who offer direct deposit or payroll cards¹ also offer employees the option of receiving a paper paycheck. The remainder of section 275:43 would remain unchanged.

SB 341 reflects a larger movement in today's society away from paper checks. Indeed, at least half of the states currently allow employers to offer their employees the choice between direct deposit and payroll cards without also offering a paper paycheck. Similarly, the federal government and the vast majority of states now deliver a variety of benefits electronically, including unemployment compensation, food stamps, aid to families and child support.

As drafted, however, SB 341 would not accomplish the goal of allowing employers to implement purely electronic wage payment programs. This is because other language in section 275:43 would continue to require an employee's written authorization for both direct deposit and payment using a payroll card. As a result, an employee who does not consent to direct deposit or a payroll card would still need to be paid by cash or check. The APA recommends that you remove these requirements from section 275:43, as depicted in the attachment to this memo.

The APA also recommends revising section 275:43 to the extent that it requires employers who offer paper paychecks to make suitable arrangement with a *financial institution* for the cashing of the checks for the full amount of wages due. Today, many employers who offer paper paychecks make arrangements with business establishments other than financial institutions (e.g., Wal-Mart, Safeway or even the post office) for the cashing of their paychecks without cost.

The APA respectfully requests that you accept this memorandum as written testimony at your February 14, 2012 hearing on SB 341.

The American Payroll Association

The American Payroll Association is a nonprofit professional association representing more than 20,000 individuals and their companies in the United States and Canada. The APA's primary

¹ A payroll card is a reloadable prepaid (i.e., stored value) card issued to an employee through a national or regional bank, credit union, or savings and loan association on behalf of an employer. Each pay day, the payroll card is electronically loaded with the full amount of the employee's net pay.

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.

The Benefits of Electronic Wage Payment

Payroll cards offer a valuable solution to unbanked and under-banked workers (collectively referred to as the underserved population) who otherwise would be forced to rely on expensive alternative financial services, such as check cashers, to access their wages. Underserved workers then incur additional expense when purchasing money orders to pay their bills.²

Payroll cards bring the benefits of electronic wage payment to these underserved employees who cannot participate in direct deposit. The vast majority of payroll cards are branded, meaning that they bear a Visa, MasterCard or Discover logo. These cards can be used anywhere that payment brand is accepted. For example, employees can take their cards to more than 90,000 bank branches nationwide and receive their full wages from the bank teller without cost. Employees may also choose to use their cards 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. These are all things underserved employees cannot do when they only carry cash. In addition, all of the benefits 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.

The ability to pay *all* employees electronically benefits employers as well. Direct deposit and payroll cards allow employer to deliver wages in a timely manner even when employees are away from the work place due to business travel, vacation or illness, and even when faced with unexpected contingencies such as severe weather conditions and natural disasters. Moreover, the cost of issuing and distributing paper paychecks can be enormous, particularly for employers who rely on overnight carriers to deliver payroll. For all employers, electronic payment methods reduce check processing costs and eliminate expenses associated with lost or stolen paychecks. Convenience to employees and prompt access to wages translates into increased morale and a more productive workplace as employees spend less time during the working day handling personal banking finances.

New Hampshire's Current Wage Payment Statute (NH Rev. Stat. § 275:43)

Section 275:43(I) of the New Hampshire Revised Statutes permits employers to pay their employees in cash, by check or using various electronic means (specifically, electronic fund transfer, direct deposit and payroll cards). The statute requires that various conditions be satisfied depending on the particular payment method used. For example, paychecks must be drawn on a financial institution convenient to the place of employment where suitable arrangements have been made for the cashing of the checks by employees for the full amount due. Direct deposit requires the written authorization of the employee.

² A 2009 study by the FDIC revealed that 2.2 % of New Hampshire households are unbanked and another 12.1% are underbanked.

Several requirements must be satisfied when payroll cards are used. For example, the employee must voluntarily consent in writing to being paid on a payroll card, and must provide a new written consent every time there is a change to the payroll card program. The statute makes clear that payment using a payroll card may not be made a condition of hire or continued employment. In addition, employees must be provided with written disclosures of all their payment options, including the terms and conditions of the payroll card option with an itemized list of all fees that may be incurred when taking advantage of the various features offered with the payroll card.

Concerns with and Suggested Revisions to Senate Bill 341

If SB 341 is enacted as introduced, employers who offer direct deposit and payroll cards would no longer need to offer paper paychecks. To the extent that the purpose of the bill is to permit purely electronic wage payment, the bill would not accomplish its purpose. As mentioned above, paragraph (II)(b) of section 275:43 would still require that the employee consent in writing to the electronic fund transfer of wages to a payroll card account, and would prohibit making consent a condition of hire or continued employment. In addition, paragraph (II)(c) would still require employers to obtain a new written consent every time there is a change to the terms and conditions of the payroll card account. Thus, even if SB 341 is enacted as introduced, an employee who does not consent to direct deposit or a payroll card would need to be paid by cash or check. For these reasons, we strongly recommend that you remove these provisions of paragraphs II (b) and (c) from the statute.

We also urge you to remove the requirement that employees make arrangements with a *financial institution* for the cashing of paychecks. While the APA agrees that employees should have access to their full wages on payday, employers should be allowed to make arrangements for the cashing of paychecks at business establishments other than financial institutions.

Conclusion

The APA appreciates the opportunity to voice its support for SB 341, and urges the bill's sponsors and members of the Senate Commerce Committee to make the additional revisions discussed above. For your convenience, these revisions are depicted in the attachment to this memorandum.

Please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (650-320-1824) with any questions or if you would like to discuss these issues further.

Sincerely,



William Dunn, CPP
American Payroll Association
Senior Manager of Government Relations



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

Attachment:

Proposed Revisions to SB 341

N.H. Rev. Stat. 275:43 Weekly.

I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

(a) In lawful money of the United States;

(b) By electronic fund transfer;

(c) By direct deposit with written authorization of the employee to banks of the employee's choice;

(d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or

(e) [Revisions proposed by APA:] With checks payable at ~~on banks~~ a financial institution or other established place of business convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; [Revisions proposed by SB 341:] ~~provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be made to the administrator or other designated official of the applicable health and welfare or pension trust fund.~~

II. If an employer offers its employees the option of receiving wages by a payroll card, the employer shall:

(a) Provide to the employee written disclosure in plain language of all the employee's wage payment options. The written disclosure shall state the terms and conditions of the payroll card account option, including, but not limited to, the requirements set forth in this section and a complete itemized list of all known fees that may be deducted from the employee's payroll card account by the employer or card issuer. The disclosure shall also state whether third parties may assess transaction fees in addition to the fees assessed by the employee's payroll card issuer or issuers. In no event shall the employer provide payment of wages to a payroll card that has an expiration date, unless the employer agrees to provide a replacement payroll card before the expiration date at no cost to the employee.

[Revision proposed by APA:] ~~(b) Initiate payment of wages to an employee by electronic fund transfer to a payroll card account only after the employee has voluntarily consented in writing to that method of payment. Consent to payment of wages by electronic fund transfer to a payroll card account shall not be a condition of hire or of continued employment. The written~~

~~consent signed by the employee shall include the terms and conditions of the payroll card account option.~~

(b) Provide written notice of any change to any of the terms and conditions of the payroll card or payroll card account, including but not limited to an itemized list of all fees that may have changed [Revision proposed by APA:]; ~~and obtain written assent from the employee that the employee voluntarily consents to receive wages to a payroll card or payroll card account subject to the changes.~~ The employer shall be responsible for any increase in fees charged to the employee before the employer provides written notice of such changes to the employee.

(c) Provide the employee the option to discontinue receipt of wages by a payroll card or payroll card account at any time, without penalty to the employee.

III. If a subcontractor who is responsible for making health and welfare fund or pension fund contributions fails to make such contributions within the 30-day requirement of paragraph I, the person designated to receive such contributions shall, within 15 days of the date the contributions became due, notify in writing the labor commissioner that the contributions are overdue. The labor commissioner shall notify the prime or general contractor within 15 days from the date of receipt of such notice that such contributions are overdue. The department of labor may pursue the general or prime contractor for such contributions only after all reasonable efforts have been made to secure the contributions from the subcontractor.

IV. The commissioner may, upon written petition showing good and sufficient reason, permit payment of wages less frequently than weekly, except that it shall be at least once each calendar month. In all instances, payment shall be made regularly on a predesignated date. The commissioner may prescribe the terms and conditions of such permission, and limit the duration thereof.

V. Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to *RSA 275:42*, III, when due.

VI. Nothing in this section shall prevent an employer from compensating an employee on a draw against commission basis as defined in *RSA 275:42*, VII.

VII. This section shall not be construed to preclude the use of compensatory time off as compensation.

(a) This paragraph applies to:

(1) Governmental entities.

(2) Public sector employees who are under a collective bargaining employment agreement or, if not negotiated through a union or other designated employee representatives, that the agreement or understanding must be reached between employer and employee before the performance of any work.

(b) (1) When the employee requests the use of accrued compensatory time, the request shall be honored within a reasonable period of time unless to do so would unduly disrupt the operation of the employing agency. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off.

(2) The employer shall not have a policy of requiring the use of compensatory time within a certain period or else the employee will lose it.

(3) Upon termination of employment for any reason, an employee shall be paid for unused compensatory time at the final regular rate received by such employee.

(c) (1) Limitations concerning the ceiling of accrual of compensatory time are as follows:

(A) Public safety, emergency response, or seasonal activity employees may accrue no more than 480 hours of compensatory time for 320 actual overtime hours worked. This limitation shall not apply to office personnel or civilian employees who may perform public safety activities on an emergency basis, even if such employees spend substantially all of their time in a particular work week engaged in such activities.

(B) Other public sector employees may accrue no more than 240 hours of compensatory time for 160 hours of actual time worked.

(2) If an employee has accrued more than the applicable ceiling for compensatory time, such employee shall be paid overtime pay at time and one half of the employee's regular rate of pay on the designated pay day.

(d) For the purposes of this paragraph:

(1) "Governmental entity" means any branch, department, commission, bureau, agency, or agent of the government of this state or a political subdivision of this state.

(2) "Public safety activities" includes law enforcement, firefighting, or related duties.

(3) "Emergency response activities" includes dispatching of emergency vehicles and personnel, rescue work, and ambulance services.

(4) "Seasonal activity" includes duties performed by employees assigned to work during periods of significantly increased demands on a regular and recurring basis and during this period protected overtime may result in the accumulation of more than 240 compensatory time hours. These periods of short but intense activity shall not qualify as seasonal.

(e) Nothing in this paragraph modifies or affects any federal law regarding compensatory time off including the Fair Labor Standards Act of 1938, 29 U.S.C. *section 207*. The purpose of this paragraph is to make compensatory time off available as set forth above under New Hampshire law and not to limit already existing rights and protection. An employer shall provide compensatory time off under whichever statutory provision provides greater rights to employees.