



# American Payroll Association

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Government Relations • Washington, DC

Senate Commerce Committee

March 25, 2014, 1:15 p.m.

Legislative Office Building, Room 101

## **Statement in Opposition to HB 1404**

The American Payroll Association<sup>1</sup> (APA) appreciates the opportunity to submit the following statement in opposition to House Bill 1404 (HB 1404). If enacted, HB 1404 would impose unnecessary and unduly burdensome requirements on the use of payroll cards. The APA, the Federal Reserve, numerous state governments, and many consumer advocates view payroll cards as a vastly superior method of payment when compared to paper checks. HB 1404 would institute barriers to their implementation that will prevent many New Hampshire residents from ever realizing their benefits and will perpetuate a status quo in which those without bank accounts will continue to pay exorbitant fees for alternative financial services. HB 1404 will hurt the very workers the bill intends to protect. As discussed below, current state and federal provisions already provide abundant consumer protections on this voluntary and beneficial payment method.

### **The APA's Position on Payroll Cards**

Last year, the APA supported legislation (SB 100/HB 357) that would have allowed employers to pay employees in New Hampshire by giving the employees the choice between direct deposit and payroll cards, without offering a paper paycheck option. Electronic wage payment methods offer employees access to their net pay in a far safer, more secure and less expensive way than traditional paper paychecks. This Committee voted in favor of SB 100 by a 5-0 vote.

### ***Payroll Cards Offer a Valuable Solution for Underserved Employees***

Many well respected policymakers, consumer advocates and government regulators agree that payroll cards are a very beneficial option for underserved workers who often rely on expensive

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<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.

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alternative financial services, such as check cashers, to access their wages. As an 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.” A recent article in the New Hampshire Business Review similarly noted that: “When properly utilized, prepaid payroll cards hold the potential to generate extraordinarily positive outcomes – and the biggest benefit of all is to the unbanked family.”<sup>2</sup>

Research supports these endorsements. According to a study by the Federal Reserve Bank of Philadelphia, payroll cards are the most cost-effective transaction accounts available for consumers without bank accounts; less costly than checking accounts and general purpose prepaid debit cards, and less than one-fifth the cost of check-cashing services.<sup>3</sup> Another study by the Payment Card Center of the Federal Reserve Bank of Philadelphia confirmed that *many employees use pay cards without ever incurring a fee, and those who do incur fees could have avoided them.*<sup>4</sup>

According to the FDIC, 14.4% of all New Hampshire households are either unbanked (having no checking or savings account) or under-banked (having a checking or savings account, but still reliant on alternative financial services such as check cashing).<sup>5</sup> Although employers are required to provide all employees with a means of cashing their payroll checks, many workers still rely on expensive check cashing services. ***New Hampshire law imposes no limit on the amount of fees that check cashing services may charge.***

Payroll cards offer underserved workers with a valuable solution. The vast majority of payroll cards are branded, meaning that they bear the logo of a major payment brand such as Visa or MasterCard. These cards can be used anywhere that the payment brand is accepted. For example, employees can take their cards to tens of thousands of financial institution branch locations nationwide and receive their full wages from the 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. Most of these are actions underserved employees cannot do when they only carry cash. Employees also are provided with many ways of accessing their account balance without fees and with budgeting tools such as mobile applications and low balance text alerts to help them manage their finances.

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<sup>2</sup> See, New Hampshire Business Review, *Payroll cards benefit employers and employees* (March 21, 2014), available at <http://www.nhbr.com/March-21-2014/Payroll-cards-benefit-employers-and-employees/>.

<sup>3</sup> Federal Reserve Bank of Philadelphia: *The Cost Effectiveness of Stored-Value Products for Unbanked Consumers*, May 2005.

<sup>4</sup> S. Wilshusen, R. Hunt, J. van Opstal, and R. Scheider, *Consumer’s Use of Prepaid Cards: A Transaction-Based Analysis* (Federal Reserve Bank of Philadelphia Payment Cards Center, August 2012).

<sup>5</sup> 2011 FDIC National Survey of Unbanked and Underbanked Households, available at [http://www.fdic.gov/householdsurvey/2012\\_unbankedreport.pdf](http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf).

## Current Treatment of Payroll Cards Under State and Federal Law

Section 275:43(I) of the New Hampshire Revised Statutes requires that employers pay all wages to employees on designated paydays and “at no cost to the employee.” When employees are paid by check, this means that the check must be drawn on a financial institution convenient to the place of employment where suitable arrangements have been made for employees to cash their check for the full amount due. When employees voluntarily elect to be paid using a payroll card, the employer must provide the employee with at least one means of withdrawing up to and including *the full amount of the balance* in the payroll card account, not just net wages, each pay period at a financial institution or other location convenient to the place of employment. In other words, the employee must be able to treat his or her card like a “plastic paycheck.”

Section 275:43 imposes a number of additional requirements on the use of payroll cards in New Hampshire. In fact, New Hampshire already has one of the most comprehensive payroll card statutes in the country. For example, section 275:43 requires employers that offer payroll cards to notify employees of all of their wage payment options and to satisfy a number of other detailed disclosure requirements. Participation in the program must be voluntary, consent may not be made a condition of hire or continued employment, and the written consent must include the terms and conditions of the payroll card option including an itemized list of all fees that may be incurred. A new written disclosure and consent is required each time there is a change in the program, regardless of type or scope of the change, and employees must be provided with the option of changing their wage payment method at any time, without penalty. A complete list of existing requirements relating to payroll cards under New Hampshire law is set forth in the Appendix to this Statement.

In addition, New Hampshire’s wage payment statutes expressly require that payroll cards offered in the state comply with the federal Electronic Fund Transfer Act and its implementing regulation, Regulation E. N.H. Rev. Stat. § 275:42(IX). These authorities provide a number of additional consumer protections on payroll cards.<sup>6</sup> Regulation E 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. This permits payroll cardholders to easily understand how to use the card to their best advantage. It also requires the card issuer to provide employees with access to information about their account balance and transaction history. Although overdrafts on payroll cards are uncommon, Regulation E prohibits fees for overdrafts without prior consent.

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<sup>6</sup> Note that the federal Consumer Financial Protection Bureau has issued an advance notice of proposed rulemaking and is considering extending the protections of Regulation E to other types of prepaid products. The Bureau has suggested that it also is reviewing the Regulation E consumer protections that apply to payroll cards. In addition, there are bills pending in the United States Congress that address disclosures and other consumer protections on prepaid cards. Given the fact that robust consumer protections already exist under New Hampshire law, and in light of the fact that the federal government is evaluating what type of consumer protections are most needed on prepaid cards generally, the restrictive provisions set forth in HB 1404 are both unnecessary and premature.

Finally, all of the protections offered on debit products by the major payment brands (e.g., Visa, MasterCard and Discover) also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero-liability programs.

### **HB 1404 Would Unnecessarily Encumber the Use of Payroll Cards in New Hampshire**

At a time when free checking accounts are becoming significantly less common, HB 1404 would require employers who want to offer payroll cards to provide their employees with a number of free banking services. This is not required for any other method of wage payment and is likely to be cost prohibitive.

For example, HB 1404 would go beyond requiring full and free access to wages, and would require that employees be provided at least three free withdrawals each pay period for up to and including *the full amount in the employee's payroll card account*. In other words, if an employee withdraws his or her full wages on payday but later receives deposits from other sources during the pay period, the employer must pay for the employee to access these other, nonwage, funds without cost.

Moreover, HB 1404 would require employers to provide monthly written statements unless the employee affirmatively declines this option. This is true even though the information is always available to employees electronically without cost, and most employees do not read written transaction histories. HB 1404 also would prohibit payroll card issuers from charging employees virtually any type of fee associated with the use of their payroll card. A complete list of prohibited fees is provided in the Appendix to this statement.

Finally, HB 1404 would prohibit employers from offering payroll cards to their employees until after the employees have been offered, and have declined, the option of receiving wages by direct deposit and a paper paycheck. Employers should be permitted to offer their employees all payment options at one time so that employees can select the option that is best suited for their situation. Offering all of the options at one time also fits more easily into the hiring practices and processes of most employers.

### **Conclusion**

The APA urges you to oppose HB 1404. New Hampshire law already requires that all electronic payment methods be voluntarily authorized by participating employees. Moreover, both state and federal law already ensure that robust consumer protections are in place when payroll cards are offered. New Hampshire workers and businesses should be permitted the same access to payroll cards as any other form of wage payment, unhindered by the prohibitive burdens of provisions like those in HB 1404.

Please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (650-320-1824) with any questions or concerns that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Dunn".

William Dunn, CPP  
American Payroll Association  
Director of Government Relations

A handwritten signature in blue ink, appearing to read "Cathy S. Beyda".

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

## APPENDIX

### Treatment of Payroll Cards under New Hampshire Law: Comparison of Existing and Proposed Requirements

Requirement	Treatment of Payroll Cards Under Current New Hampshire Law	House Bill 1404, as amended in the House
<b>Cash Access</b>	<p>Employees must be provided:</p> <ul style="list-style-type: none"> <li>• At least one free means of withdrawing <i>the full account balance</i> each pay period (§275:43(I)(d)),<sup>7</sup></li> <li>• At a financial institution or other location convenient to the place of employment (§275:43(I)(d)),</li> <li>• None of the employer’s costs associated with the payroll card account may be passed on to employees (§275:43(I)(d)),</li> <li>• A free replacement card prior to the card’s expiration date. Funds in the payroll card account may not expire (§275:43(II)(a)).</li> </ul>	<p>HB 1404 would make the following revisions:</p> <ul style="list-style-type: none"> <li>• <b><i>At least 3 free withdrawals</i></b> of up to the <b><i>full account balance</i></b> during each pay period (§ 275:43(I)(d)).</li> <li>• At a financial institution, <b><i>automated teller machine within the network of financial institutions of the issuer providing the payroll card account</i></b>, or other location convenient to the place of employment (§ 275:43(I)(d)).</li> <li>• A free replacement card <b><i>at least 15 days</i></b> before the card’s expiration date. (§ 275:43(II)(a)).</li> </ul> <p>In addition, HB 1404 would prohibit employee fees for the following payroll card account transactions and services:</p> <ul style="list-style-type: none"> <li>• <b><i>Declined transactions</i></b></li> <li>• <b><i>A low balance fee</i></b></li> <li>• <b><i>Account inactivity</i></b></li> <li>• <b><i>Access to payroll card balance and transaction history online, by IVR, at an in-network ATM, or any automated system</i></b></li> <li>• <b><i>Any transaction or service not expressly identified by type and amount in the employer’s contract with the issuer, or any service not expressly disclosed to the employee.</i></b> (§275:43(II)(g)).</li> </ul>
<b>Employee Choice</b>	Employers must provide employees with written disclosure, in plain language, of all their wage payment options.	In addition to existing requirements, HB 1404 would:

<sup>7</sup> All citations refer to Chapter 275 of the New Hampshire Revised Statutes unless otherwise indicated.

Requirement	Treatment of Payroll Cards Under Current New Hampshire Law	House Bill 1404, as amended in the House
	<p>(§275:43(II)(a)).</p> <ul style="list-style-type: none"> <li>• Employers may not initiate the payment of wages to a payroll card account without the employee’s voluntary, written consent, <ul style="list-style-type: none"> <li>○ Consent may not be a condition of hire or continued employment,</li> <li>○ The written consent signed by the employee must include the terms and conditions of the payroll card account option,</li> <li>○ A new written consent must be obtained whenever there is a change in terms and conditions. (§275:43(II)(b), (c)).</li> </ul> </li> <li>• Employers that use payroll cards must also offer paychecks. (§275:43(II)(e)).</li> <li>• Employees must be given the option of discontinuing the receipt of wages to a payroll card at any time, without penalty. (§275:43(II)(d)).</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibit employers from paying wages using payroll cards unless <b><i>“the employer has offered, and the employee has declined,” both direct deposit and payment by paper check.</i></b> (§ 275:43(I) (d)).</li> </ul>
<b>Information and Training</b>	<p>Employers must provide employees with written disclosures, in plain language, of all of the employee’s wage payment options. (§275:43(II)(a)).</p> <ul style="list-style-type: none"> <li>• The disclosures must include: <ul style="list-style-type: none"> <li>○ The terms and conditions of the payroll card option,</li> <li>○ The requirements of section 275:43,</li> <li>○ A complete itemized list of all known fees that may be deducted by the employer or card issuer, and</li> <li>○ A statement as to whether third parties may assess additional transaction fees. (§275:43(II)(a)).</li> </ul> </li> <li>• The employer must provide written notice of any change to any of the terms of the payroll card account (including changes to fees), and obtain the employee’s voluntary</li> </ul>	<p>Disclosure requirements would remain unchanged under HB 1404.</p> <p><i>See fee prohibitions under “cash access” above.</i></p>

Requirement	Treatment of Payroll Cards Under Current New Hampshire Law	House Bill 1404, as amended in the House
	<p>written consent to receive wages subject to the changes.</p> <ul style="list-style-type: none"> <li>○ 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. (§275:43(II)(c)).</li> </ul> <ul style="list-style-type: none"> <li>• NH also expressly incorporates the federal (Regulation E) notice and disclosure requirements). N.H. Rev. Stat. § 275:42(IX).</li> </ul>	
<p><b>Access to Account Information</b></p>	<p>New Hampshire expressly incorporates the federal (Regulation E) requirement for access to account information. (§ 275:42(IX)). Specifically, financial institutions that issue payroll cards must provide either:</p> <ul style="list-style-type: none"> <li>• <b>Periodic Statements.</b> <ul style="list-style-type: none"> <li>○ Once per month, or at least quarterly if no electronic fund transfers (EFTs) have occurred</li> <li>○ The statement must include all transactions (including date, type and amount), account number, fees assessed, account number and contact information, or</li> </ul> </li> <li>• <b>Alternative to Periodic Statements.</b> A financial institution may provide access to the following information in lieu of periodic statements: <ul style="list-style-type: none"> <li>○ Account balance through a readily available telephone line,</li> <li>○ Electronic history of account transactions that covers at least the preceding 60 days, and</li> <li>○ A written history of account transactions provided in response to the employee's request that covers at least 60 days preceding the date the financial institution receives the request.</li> </ul> </li> </ul> <p>(12 CFR §§1005.9(b), 1005.18(b)).</p>	<p><b>HB 1404 would require periodic activity statements as follows:</b></p> <ul style="list-style-type: none"> <li>• <b>Once per month, or at least every 90 days if there is an account balance but no activity in the account,</b></li> <li>• <b>The statement must include: all transactions during the period including deposits, withdrawals, fees charged and other transactions affecting the account,</b></li> <li>• <b>The employer must provide the employee the option of receiving the statement electronically or in paper,</b></li> <li>• <b>Employees may voluntarily decline periodic statements but must do so in writing. ((§ 275:43(II)(g)).</b></li> </ul> <p>HB 1404 would not permit a financial institution to provide the federal alternative in lieu of periodic statements.</p>



