



American Payroll Association

Government Relations • Washington, DC

December 16, 2008

W. Wright Banks, Jr.
Senior Assistant Attorney General
Department of Law, State of Georgia
40 Capital Square SW
Atlanta, GA 30334-1300

Re: Electronic Pay Methods

Dear Mr. Banks,

By way of this letter, the American Payroll Association ("APA") requests that the Georgia Attorney General's Office clarify its position on the use of payroll cards under state law. This request is based on a recent letter sent to one of our members suggesting that employers in Georgia may not use payroll cards to compensate their employees. In that letter, your office states that payroll cards are not permitted because "O.C.G.A § 34-7-2 sets out the acceptable form[s] of payments [sic] for wages" and "does not include the use of payroll cards." A copy of the letter is attached for your convenience.

Section 34-7-2 allows employers to pay their employees in cash, by check or, with the employee's consent, by direct deposit into the employee's own bank account. While section 34-7-2 does not mention payroll cards, section 34-7-3 specifically authorizes the use of "other instruments" of wage payment provided certain conditions are satisfied. O.C.G.A. § 34-7-3. As set forth below, most payroll card programs satisfy the requirements of Georgia's wage payment statutes. In fact, the State of Georgia pays many of its own employees using payroll cards and gives these employees the choice of receiving their wages through direct deposit or on a payroll card. By its express terms, section 34-7-2 applies to both public and private sector employers. Accordingly, there is no reason why if it is lawful under sections 34-7-2 and 34-7-3 for the state to compensate its employees using payroll cards, and even to require its employees to choose between electronic forms of wage payment, it is not lawful for private sector employers to pay their employees in this manner.

The American Payroll Association

The APA is a nonprofit professional association representing more than 24,000 payroll professionals and their companies in the United States and Canada. 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.

In 2004, the APA's Government Affairs Task Force formed a Payroll Card Subcommittee in response to an increased interest in the use of payroll cards by American employers. This subcommittee monitors the development and use of payroll cards within the employer community and helps educate policymakers

and regulators about the benefits and uses of the cards. The subcommittee is made up of many active and knowledgeable APA members representing large and mid-size employers, payroll service providers, and other vendors and entities interested in payroll card programs.

A Description of Payroll Cards

A payroll card is a pre-paid, reloadable ("stored value") card issued through a national or regional bank. On payday, the card is electronically loaded with the full amount of the employee's net pay. The employee can then use the payroll card to access his or her wages just like he or she would use a paper paycheck. Indeed, according to the FDIC, "a stored value card is no different than a check or bank-issued traveler's check or money order. ... All of these mechanisms merely provide access to money stored at a bank."¹

Most programs allow employees to withdraw their entire net pay, or deposit the amount into their checking and/or savings account, at least once each pay period at no cost. Depending on the program, employees usually are able access their pay in a variety of ways, such as ATM withdrawals, bank teller transactions and point of sale transactions. Employees who are paid using a branded payroll card (e.g., one bearing the Visa, MasterCard or Discover logo) are able to cash out the card balance at any bank that issues that particular brand of cards. For example, any bank that issues Visa cards is required by Visa to process a cash transaction at the bank teller window using a Visa payroll card without fees. This means that employees can access their full wages on payday with no fee at thousands of bank locations in Georgia or tens of thousands of locations nationwide.

Payroll Cards Have Gained Mainstream Acceptance

During the past five years, the APA has observed a dramatic increase in the use of and interest in electronic wage payment methods including direct deposit and payroll cards. The regulatory environment relating to electronic payment methods also has changed significantly during this time. For example, effective July 2007, the Federal Reserve Board amended Regulation E to make clear that its provisions cover payroll card accounts that are established directly or indirectly through an employer, and to which transfer of employee wages or other compensation is made on a recurring basis.² 12 C.F.R. §205.2. Regulation E establishes the rights, liabilities and responsibilities of participants of electronic fund transfer (EFT) systems. Although the compulsory use provision of Regulation E prohibits an employer from requiring its employees to receive their wages by direct deposit to a particular financial institution,³ the Board takes the position that employers may comply with Regulation E by offering their employees the choice of payment by direct deposit or on a payroll card. More specifically:

The Board believes the compulsory use provisions apply to payroll card accounts because they are established as accounts for the receipt of EFTs of salary. However, provided that an employer does not require a consumer to obtain a payroll card account as the method of receiving pay, and permits, for example, a consumer to receive pay via direct deposit to a financial institution, the compulsory use prohibition should not be implicated.

¹ Federal Deposit Insurance Corporation, Notice of Proposed Rulemaking, *Deposit Insurance Coverage; Stored Value Cards and Other Nontraditional Access Mechanisms*, 70 Fed. Reg. 45571 45574 (August 8, 2005).

²The Federal Deposit Insurance Corporation also has recognized increased acceptance and use of payroll cards and has issued proposed regulations in response. *See*, 70 Fed. Reg. No. 1515, p. 45571 (2005).

³ Supplement I to 12 CFR Part 205 - Official Staff Commentary.

71 Fed. Register 1473, 1479 (January 10, 2006). Thus, for employers that offer direct deposit to their employees, the payroll card simply represents another choice of financial institution into which employees' net pay can be deposited.

On the state level, nearly a third of the states have amended their wage payment statutes and/or regulations to specifically address payroll cards, and the law and/or administrative enforcement positions in at least 18 states allow, or can be interpreted as allowing, employers to use electronic wage payment methods as the exclusive means of compensating their employees. In addition, many federal, state, and local government departments and agencies now compensate their own employees using payroll cards. It is also worth noting that over half of the states use debit cards for electronic delivery of state government benefits such as unemployment insurance payments, aid to families and child support; the Federal government also is launching Social Security payments using prepaid cards. This growing wave of electronic payment specifically using a debit card, similar to a payroll card, clearly shows that this payment medium has moved into the mainstream.

Electronic Wage Pay Methods Benefit Employees and Employers Alike

The rapid acceptance of electronic payment methods such as payroll cards is undoubtedly due to the many benefits that they offer to both employees and employers alike. From the employee's perspective, direct deposit and payroll cards eliminate check cashing fees and remove delivery problems that often result when, for example, an employee is ill or traveling. Employees without bank accounts, who are likely to be the principal users of payroll cards, generally incur high fees when cashing their payroll checks and then incur additional costs when paying bills using money orders or traveling to a payment location to pay in cash.⁴ These fees are eliminated when employees are paid on a payroll card. Electronic payment methods also reduce the risks associated with lost or stolen paychecks and facilitate the delivery of wages during natural disasters. An added benefit of payroll cards is that employees who do not have bank accounts or credit cards now are able to use the available balance on their payroll card to make purchases at millions of merchants worldwide who participate in the debit card networks.

For employers, the benefits of direct deposit and payroll cards are primarily financial and administrative. The cost of issuing and distributing paper paychecks can be enormous, particularly for large employers and employers with dispersed workforces who often rely on overnight carriers to deliver payroll. Even for smaller employers, electronic payment methods reduce check processing costs and eliminate expenses associated with lost or stolen paychecks. In today's troubled economy cost-saving measures like these are essential to protect the jobs of American workers. Moreover, 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 and finances. Finally, payroll cards also are an attractive option for employers who are looking to become more environmentally conscious.

In light of these benefits, the Federal Reserve Bank of Chicago has described payroll cards as "an effective alternative to paper-based checks for employers of individuals who do not have transaction accounts or individuals unwilling to give access to their existing personal bank accounts."⁵ In fact,

⁴ A survey recently conducted by the Brookings Institute reveals that approximately 10 million households in the country lack any type of transaction account (e.g., savings or checking) and approximately 12 million do not have a checking account. Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retail Banking Infrastructure and Its Wealth-Building Potential*, January 2008,

http://www.brookings.edu/~media/Files/rc/reports/2008/01_banking_fellowes/01_banking_fellowes.pdf.

⁵ Federal Reserve Bank of Chicago, *Payment Instrument Choice: The Case of Prepaid Cards* (2Q, 2006).

payroll cards have been found to be the least expensive way for an employee to receive wages.⁶ Accordingly, it is not surprising that a study by the Comptroller of the Currency revealed that once employees use a payroll card they rarely revert back to receiving a paper paycheck.⁷

The State of Georgia Itself Compensates Employees Using Payroll Cards

In 2004, Georgia proudly announced that it was the first state in the nation to completely eliminate paper paychecks for some of its employees.⁸ Employees of the Department of Human Resources who do not elect to receive their wages by direct deposit are issued a payroll debit card.⁹

In the same year, Georgia also became the second state in the nation to eliminate paper checks for child support payments. The Office of Child Support Services describes debit cards as a more efficient means of paying clients that "improve operations and productivity by reducing the administrative burdens associated with paper checks."¹⁰ The program is expected to save the state millions of dollars a year in postage, printing and administrative costs and to "eliminate the inconvenience of checks lost, stolen or delayed in the mail."¹¹

Georgia's Wage Payment Statutes Permit the Use of Payroll Cards

The Georgia Wage Payment Statutes

Georgia's wage payment statutes identify permissible methods of wage payment and allow employers to select which method(s) will be used subject to statutory restrictions. As discussed above, section 34-7-2 of the Official Code of Georgia Annotated requires that:

Every person, firm, or corporation ... shall make wage and salary payments to ... employees or their authorized representatives (1) by lawful money of the United States, (2) by check, or (3) with the consent of the employee, by authorization of credit transfer to his account with a bank, trust company, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States. ...

O.C.G.A. § 34-7-2. Section 34-7-3 further provides:

⁶ Federal Reserve Bank of Philadelphia, *The Cost Effectiveness of Stored-Value Products for Unbanked Consumers* (May 2005).

⁷ Comptroller of the Currency, *Payroll Cards: An Innovative Product for Reaching the Unbanked and Underbanked*, (June 2005).

⁸ The Human Side, Georgia Department of Human Resources (Summer 2004), p. 4, http://dhr.georgia.gov/DHR/DHR_CommonFiles/HumanSideSummer04.pdf.

⁹ Georgia Department of Human Resources, Employer Handbook (Rev. May 18, 2006), p. 9, <http://www2.state.ga.us/Departments/DHR/ohrmd/Publications/handbook.pdf>.

¹⁰ Georgia Department of Human Resources, *OCSS is staying furrent with today's technology by offering payments in the form of debit cards*, (August 10, 2007), <http://ocse.dhr.georgia.gov/portal/site/DHR-OCSE/menuitem.f3ca900e75789bd18e738510da1010a0/?vgnextoid=757a10ad9200010VgnVCM100000bf01010aRCRD>.

¹¹ Georgia Department of Human Resources, *Debit cards, direct deposit to replace child support checks*, <http://dhr.georgia.gov/portal/site/DHR/menuitem.3d43c0fad7b3111b50c8798dd03036a0/?vgnextoid=41350e5850c4ff00VgnVCM100000bf01010aRCRD&vgnnextchannel=08cec92d86aa1010VgnVCM100000bf01010aRCRD>.

Any order, check, draft, note, or other instrument issued in payment of wages or salary ... must be negotiable and payable in cash, on demand, without discount, at some established place of business in the United States, the name and address of which must appear on the instrument. At the time of issuance of such instrument and for a reasonable time thereafter (which must be at least 30 days), the maker or drawer must have sufficient funds or credit or an arrangement or understanding with the drawee as to its payment.

O.C.G.A. § 34-7-3. These provisions make clear that employers in Georgia may compensate their employees using instruments of wage payment other than traditional paper paychecks, including payroll cards, so long as the following conditions are satisfied: (1) the instrument must be negotiable and payable in cash, without discount, at an established place of business in the United States, (2) the name and address of the location in the United States where the instrument is negotiable must appear on the instrument; and (3) payroll funds must be available and accessible to the employee at the time of wage payment and for at least 30 days thereafter.

Payroll Cards Satisfy the Requirements of the Wage Payment Statutes

As mentioned above, most payroll card programs provide employees with at least one cash withdrawal each pay period without fees. When this is the case, payroll cards satisfy section 34-7-3's requirement that instruments of wage payment be negotiable on demand, without discount, at an established place of business in the United States. Moreover, funds transferred to a payroll card are fully available and accessible to the employee on payday and for at least 30 days thereafter. In fact, once an employee has been paid using a payroll card, the employer has no access or revisionary rights to the funds. In contrast, when a paper check is issued, in contrast, the employer retains possession and has access to the funds until the check has been negotiated. Accordingly, the payroll card is actually a more secure way of transmitting wage payment than a check.

Finally, the name of the issuing bank always appears on the payroll card along with toll free telephone numbers that allow employees to access customer service representatives. A Visa or MasterCard logo on a card notifies the employee that he or she may take the card to any of thousands of participating member banks and obtain all of his or her wages without fees, at least once each pay period. In addition, cardholders are provided with information identifying locations where they can access full wages, on payday, without discount.

Payroll card programs that satisfy the above requirements comply with the plain language of section 34-7-3.

Conclusion

While Georgia's wage payment statutes do not specifically mention payroll cards, they do permit employers to compensate their employees using "other instruments" of wage payment provided statutory requirements are met. Payroll cards satisfy these requirements when employees are provided with at least one cash withdrawal each pay period without fees, the cards notify employees where they can access their wages without fees, and the funds on the cards are available for at least 30 days. Accordingly, the APA respectfully requests that the Attorney General's Office reconsider its position on payroll cards and permit employers to compensate their employees using payroll cards, and to give employees the choice of receiving their wages through direct deposit or on a payroll card, so long as these conditions are satisfied.

We would welcome the opportunity to discuss these issues with you in more detail. In this regard, please feel free to contact Cathy Beyda at (408) 973-8215, Pete Isberg at (610) 827-1591, or Bill Dunn at (202) 232-6889.

Sincerely,

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Chair, Paycard Subcommittee, Government Affairs Task Force



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