



American Payroll Association

Government Relations • Washington, DC

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To: Jenkins, Ford, Behn, Warnstadt
From: William Dunn
Date: February 21, 2006
Subject: HSB 517, SSB 3009, HF 2135: Payment of Wages by Payroll Debit Card

Dear Chairman Jenkins, Representative Ford, and Co-Chairs Behn and Warnstadt:

The APA is a nonprofit professional association representing over 22,000 companies and individuals in all 50 states and Canada. The APA's central mission is to educate its members about best practices associated with paying America's workers, including compliance with all relevant federal, state, and local laws. As part of this mission the APA works with legislative and executive branches of government to find ways for employers to meet their obligations under the law and support public policy initiatives, while minimizing administrative burden.

With growing employer interest in the use of payroll debit cards in the United States, the APA formed a Payroll Card Subcommittee to monitor the use of these cards within the employer community and to help educate policy makers and regulators about their benefits and uses. This subcommittee is made up of 40 active and knowledgeable APA members representing large and mid-size employers, payroll service providers, and other third-party vendors specializing in the support of payroll debit card programs.

Our members noted with interest HSB 517 and have asked the APA to work with the Commerce, Regulation and Labor committee to ensure that the resulting legislation strikes the most appropriate balance between worker protections and administrative feasibility. As the bill is currently written, we are concerned that Iowa workers would be disadvantaged because employers may not offer payroll debit cards. Payroll Debit Cards do offer substantial benefits to workers, particularly those without bank accounts. A few examples follow:

- About 13% of households do not have a bank account. Workers without bank accounts too often cash their checks at check-cashing stores, which charge an average of 2.5%.
- Payroll debit cards represent a new opportunity to establish needed personal financial accounts for some workers. Consumers Union reported that "... *half of persons who are currently unbanked have held a bank account in the past.*

If the prior accounts were closed for cause, these consumers may be barred for a period of up to seven years from opening a new account”.

- Payroll debit cards eliminate the need to travel to the workplace to pick up a paycheck, and then to the bank to deposit the check. Traveling workers, those on vacation and others who are away from the workplace appreciate immediate access to their pay.
- At least one free ATM or other withdrawal transaction is furnished per pay period. Cardholders may also be able to withdraw the full amount on the card at the bank or by other means, or transfer the amount on the card to another account.
- Debit cards are accepted by over one million retailers nationwide, with cash back at many retailers. No fees apply for point-of-sale purchases or cash back at retailers with many programs; others may charge a nominal POS debit fee.
- Payroll debit cards provide new purchasing power for goods and services that require a debit or credit card, such as auto rentals, hotel reservations, utility bills and on-line purchases.
- Workers suffer losses to crime when they carry significant amounts of cash. Lost or stolen cards are easily replaced.
- Payroll Debit cards are securely activated upon issuance, and PINs can be changed as needed. Workers are protected from fraudulent use by VISA or MasterCard’s zero-loss policies or under the upcoming Regulation E amendment.
- Customer service and Web site access are also available for questions or assistance.
- Periodic paper or on-line statements detail all credits and spending.
- Workers may request additional cards to provide ongoing financial support to family members, with a specific amount funded each payroll.
- Payroll Debit Cards also help workers develop financial management skills and become comfortable with the banking system.

Concerns with HSB 517

The requirement for an employer to pre-fund “any fees relating to the issuance of the payroll card charged by the financial institution” may require clarification, to distinguish initial one-time costs of card issuance from ongoing fees such as ATM charges. We believe that employers would agree to pay any initial one-time charges for card issuance, but a requirement to prepay fees is not feasible, and would effectively prohibit employers from offering such cards. It is not possible to pre-fund fee amounts because such fees vary based upon usage. Many workers incur no fees at all because they choose to withdraw all of their money at once. Others incur several fees if they choose to only withdraw money as needed and make multiple visits to the ATM or make several retail purchases over the course of each pay period. Employers will not know in advance what fees a worker might incur.

Alternatively, employees may have to document each ATM fee and order to request reimbursement after the fact. But any volume of reimbursement requests would be burdensome to both workers and employers, as the cost to process and account for the reimbursements would exceed the fee amounts. A requirement to pre-fund or reimburse fee amounts would also raise taxation questions if each expense were not documented. Federal and state tax authorities may consider all such payments to be wages subject to taxation.

Recommendation for Change

We understand the committee's concern regarding fees. We suggest that instead, the committee adopt language clarifying that the employee must be able to obtain immediate payment in full, must receive at least one free transaction per pay period, and that any fees or other charges must be prominently disclosed to and subject to the written consent of the employee. The section in question could be amended as follows:

Sec. 2. Section 91A.3, subsection 3, Code Supplement 2005, is amended to read as follows:

3 (b). An employer shall not pay wages pursuant to a payroll card pursuant to this section prior to paying to the issuing financial institution an amount equal to the wages due the employee plus any fees relating to the issuance of the payroll card charged by the financial institution. unless

- i. the employee is able to obtain immediate payment in full;*
- ii. the employee is provided with at least one free transaction per pay period, and;*
- iii. any fees or other charges are be prominently disclosed to and subject to the written consent of the employee;*

Keep in mind that any individual can obtain a payroll debit card from a bank, and ask his or her employer to load the card each payday via a routine direct deposit request. In this case, an employer would not know that a debit card account was not a traditional bank account. A state Labor Department would probably not find fault with an employer for banking arrangements that an employee independently selected. The question is whether employers can offer (and subsidize) such cards, or whether only banks can market payroll debit cards to workers. Employers should be able to offer payroll debit card programs as a voluntary alternative to paper paychecks and direct deposit, with full disclosure of any fees that may apply.

For the committee's convenience we have attached a synopsis of what many other states have done recently to address the emergence of payroll debit cards in the workplace. The APA would welcome the opportunity to work with interested stakeholders. Please let me know if we can be of assistance. Thank you.

Sincerely,

William Dunn, CPP
Manager of Government Relations
American Payroll Association

Cathy Beyda, Esq.
Chair, American Payroll Association Debit Card Committee

Peter Isberg
National Payroll Reporting Consortium

Other State Actions Concerning Payroll Debit Cards

(Excerpts of recent legislation or regulations)

Delaware Department of Labor Regulations adopted 5/14/2004 and effective 6/14/2004

Wage Payment and Collection Act 19 Del. C. Sections 109,114

Payroll Debit Card in Lieu of Cash or Check

Delaware's Wage Payment & Collection Act requires the payment of wages to employees in lawful money or checks payable on demand.... Employers may comply with this requirement by issuing a payroll debit card which provides the functional equivalent of cash or a check. It is the employers' responsibility to effectuate a payroll debit card system which will allow full payment of wages on the employee's regular payday and without cost to the employee. Employers may use a pre-paid debit card or general payroll fund account to establish suitable arrangements for converting wages into employee's disposable income.

Maine LD963 CHAPTER 89 enacted May 12, 2005

"Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee

Maryland HB 751 enacted May 26, 2005 and effective June 1, 2005

3-502 (c) Each employer shall pay a wage:

(1) in United States currency; or

... CREDIT OF THE WAGE OF AN EMPLOYEE TO A DEBIT CARD OR CARD ACCOUNT FROM WHICH THE EMPLOYEE IS ABLE TO ACCESS THE FUNDS THROUGH WITHDRAWAL, PURCHASE, OR TRANSFER IF:

(I) AUTHORIZED BY THE EMPLOYEE; AND

(II) ANY FEES APPLICABLE TO THE DEBIT CARD OR CARD ACCOUNT ARE DISCLOSED TO THE EMPLOYEE IN WRITING *IN* AT LEAST 12 POINT FONT.

Michigan 2004 SB 851 enacted and effective 1/3/2005

An employer or agent of an employer may pay wages to an employee by any of the following methods:

(d) Issuance of a payroll debit card to the employee. As used in this section, "payroll debit card" means a stored value debit card that provides an employee access to his or her wages, for withdrawal or transfer by the employee, through a network of automatic teller machines. The term includes cards commonly known as payroll debit cards, payroll cards, and paycards.

(3) An employer or agent of an employer shall not issue a payroll debit card to an employee under subsection (1)(d) without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card....

(4) An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages under subsection (1)(c) or (d).

Nevada Final Labor Commissioner Adopted Regulations - Ch. 608

Effective August 25, 2004

A REGULATION relating to employment; ... authorizing an employer to use an electronic payment system as an alternative location of payment....

2. An employer may use an electronic payment system, including, but not limited to, a direct deposit, debit card or similar payment system, as an alternative location of payment if:

(a) The employee can obtain immediate payment in full;

(b) The employee receives at least one free transaction per pay period and any fees or other charges are prominently disclosed to and subject to the written consent of the employee;

(c) The alternative location of payment is easily and readily accessible to the employee;

(d) There are no other requirements or restrictions that a reasonable person would find to be an unreasonable burden or inconvenience; and

(e) The use of an electronic payment system is optional at the election of the employee.

Virginia CHAPTER 358 [HB 472] enacted 4/14/2004

Payment of wages or salaries shall be (i) in lawful money of the United States, ... or by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full disclosure by the employer of any applicable fees and affirmative consent thereto by the employee.