



American Payroll Association

Government Relations • Washington, DC

Ms. Roslyn Wade
Department of Labor and Industry
Assistant Commissioner, Labor Standards
443 Lafayette Road N.
St. Paul, MN 55155

Re: SB 2093 Payroll Debit Cards

Dear Ms. Wade:

The APA is a nonprofit professional association representing over 22,000 companies and individuals in all 50 states and Canada. 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.

Many of our members are quite interested in the implementation of SB 2093, and have asked the APA to work with the Department to ensure that employers are interpreting the various provisions correctly. Accordingly, we would appreciate an opportunity to meet with you and your staff to discuss the issues described below. We believe that the Department, as well as Minnesota employers and their employees, would benefit from improved mutual understanding of industry practices and state requirements. Some of the questions that have been raised include:

Subdivision 2 (Filing) – Because the statutory definition of “paycard issuer” refers alternatively to employers **or** third party service providers the APA would like a clarification regarding whether the filing requirement would apply to **both** the service provider and the employer for whom the services are provided. Information on the Department's website implies that each employer who offers payroll debit cards would need to register. Assuming the company's pay cards are issued through an appropriately registered third party the APA does not find substantive value in requiring that company to also go through the registration process.

Subdivision 3, (Ownership of Wages) – We would appreciate clarification of the intended meaning of the section. Several concerns have been raised, but we would need to know more about the intended effect. We would like to discuss this with the Department.

Subdivisions 5 and 6 (Written Disclosure and Written Consent)

- a. We would like to understand the timing of the terms and conditions disclosure. The statute states, “when offering”; however providing all terms and conditions that apply to an electronic debit card may make such materials unwieldy. In fact, such a procedure may serve to obscure the very elements that the legislature perhaps wanted to highlight, e.g., fees. We agree with the requirement to disclose all key features, including applicable fees, prior to enrollment. It is, in fact, common practice for card issuers to disclose key attributes and costs of any card program prior to or at the time of enrollment, and then to provide more detailed disclosures just prior to card activation. An employee would then, at that time, have the option to not activate the card, or revert to payroll checks or direct deposit. In any event, employees are always free to discontinue their use of payroll debit cards and ask for payroll checks or direct deposit any time thereafter.
- b. The statute prescribes requirements to provide written disclosures. and copies of disclosures. The APA would appreciate the opportunity to demonstrate the various paper and electronic presentations of the information that would be presented to workers. Much of this information would be provided electronically to those workers who consented to receive it in that fashion. Such an approach would presumably satisfy the law under Minnesota’s Uniform Electronic Transactions Act.
- c. Clarify expectations for routine revisions to terms and conditions after initial acceptance. Card issuers normally revise terms and conditions periodically and change program features and fees with advance notice to cardholders. New affirmative consents should not be required, since workers are free to discontinue use of the pay card at any time. Typically in the card industry continued usage of a product after the notice of change in terms has been sent is sufficient to denote agreement or acceptance to the new terms.

Subdivision 8 (No Link to Credit) – The Department should understand that the payments system can not prevent cardholder overdrafts in certain circumstances. Although almost all transactions must be authorized in advance to confirm that funds are available, payroll debit cards may be “overdrawn” when the transaction amount is below a certain threshold, and no preauthorization is required under the VISA/ MasterCard system rules. Similarly, some retailers may make card imprints/payment authorizations on paper for subsequent (“offline”) processing. These situations are rare and cardholders must agree not to spend more than the amount available to them, but such overdrafts are unavoidable within the debit card payments system.

This is not an extension of credit – i.e., overdrafts are not charged interest and there is no expectation that a cardholder could maintain a deficit balance on the card for more than one pay period

Subdivision 9 (Personal Information) – The provision limiting the information generated by the use of the card to card processing and card administration may actually conflict with other laws and requirements. Would it prohibit compliance with lawful subpoenas or requirements to report “suspicious activity” under the Patriot Act? It may also impose more severe restrictions than those set forth in key privacy statutes such as Gramm-Leach-Bliley. Given these concerns, is it possible for the Department to clarify that disclosures and other applications otherwise permitted by federal or state law are permissible?

Subdivision 12 (Limitation on Employer Fees) – The APA asks that the Department clarify the extent of the prohibition against “employee initiation, participation, loading, or other fees.” How does it relate to Subd. 13, which prohibits fees not disclosed to the employee and inactivity or dormancy fees? How does it relate to Subdivisions 5 and 6, which require fees to be disclosed to the employee? Finally, the term “or other fees” may be so ambiguous as to prohibit fees of any kind.

The APA would welcome any clarifications you might be willing to offer in response to these questions. But we would appreciate an opportunity to meet with you and your staff to discuss these and other issues related to payroll debit cards and Minnesota’s new law. Please let me know if such a meeting can be scheduled. I can be reached at 202-857-1476 or wdunn@americanpayroll.org. Thank you.

Sincerely,

William Dunn
Manager of Government Relations
American Payroll Association

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



Peter Isberg
National Payroll Reporting Consortium