



American Payroll Association

Government Relations • Washington, DC

June 21, 2006

Mary Ellen Grace
Director of Labor Standards
Tennessee Department of Labor & Workforce Development
404 James Robertson Parkway, Suite 1606
Nashville, Tennessee 37243

Re: Payroll Debit Cards

Dear Ms. Grace:

This letter is written in response to our information we have come across stating that your office has concluded that payroll debit cards are not a permissible method of payment of wages in the state of Tennessee. It is the understanding of the American Payroll Association that your conclusion is based on a concern with the fees incurred by workers using the cards. The APA would like to dispel your concerns by providing you information on how paycards work and the options workers have to obtain their pay without incurring any fees. We would appreciate your taking the time to review the enclosed APA *State Recognition of Payroll Cards* guide. We believe that paycards should be a permissible form of payment of wages in the state of Tennessee as is the trend in other states.

Background on the American Payroll Association

The APA is a nonprofit professional association representing more than 22,000 companies and individuals in the United 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 paycards in the United States, the APA formed a Paycard 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.

Tennessee Wage Payment Provisions

While Tennessee's Prevailing Wage Act does not specifically address the electronic payment of wages, the Office of the Attorney General of the State of Tennessee issued opinion No. 84-065 (February 16, 1984) stating that T.C.A. §50-2-103(e) would permit a method of payment whereby:

[A]n employer, uniformly and systematically, pays the wages of employees by depositing each employee's pay directly in a bank, savings and loan institution or credit union of the employer's choosing but acceptable to the employee. The employee would then be permitted to withdraw any or all of those funds or have them transferred to another financial institution. There would be no charge to any employee who, in the same number of withdrawals as deposits of wages, withdraws or transfers the wages so deposited.

The Tennessee Attorney General further explained its position on the subject of electronic payment of wages in Opinion No. 86-94 (May 8, 1986) to clarify that:

- An employer is not permitted to pay wages by direct deposit to a financial institution designated by the employer over an employee's objection because the compulsory use provision of The Electronic Fund Transfer Act, *15 U.S.C. Sections 1693 et seq.*, prohibits an employer from forcing an employee to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment.
- An employer does have the right to offer payment of wages by direct deposit to a financial institution chosen by the employee without regard to the employee's preference for receiving a payroll check in lieu of direct deposit.
- Payment of wages by direct deposit to a financial institution chosen by the employee is permissible even when a fee is charged by the financial institution for the withdrawal of wages.

Based on these opinions, we believe that a Tennessee employer is permitted to pay wages by electronic transfer to a paycard account if the employee voluntarily consents to such method of payment after being informed in writing of the terms and conditions for use of the payroll card account, including all applicable fees. By consenting, the employee is choosing the financial institution that provides the paycard account and is agreeing to the fees charged in connection with the paycard account.

We also believe that an employer may mandate electronic pay by offering the employee a choice of direct deposit to a financial institution of the employee's choice or a paycard. In such instance, the paycard would need to comply with the Tennessee Attorney General's requirement that "there would be no charge to the employee who, in the same number of withdrawals as deposits of wages, withdraws or transfers the wage so deposited." This requirement can be satisfied by requiring the paycard provider to offer the employee (1) a means of withdrawing 100% of his wages and (2) one free withdrawal each pay period.

The mandate of electronic pay described above would not conflict with the compulsory use prohibition of The Electronic Funds Transfer Act. The Federal Reserve Board, in its recently issued interim final rule to cover payroll card accounts under Regulation E, addressed the application of the compulsory use provisions in its Supplementary Information by stating that:

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 [71 FR 1479, 1-10-2006].

For the reasons set forth in this letter, the APA urges you to reconsider your position regarding payroll cards.

Sincerely,

William Dunn, CPP
Manager of Government Relations
American Payroll Association

Cathy Beyda, Esq.
Chair, Paycard Subcommittee
APA Government Affairs Task Force