



American Payroll Association

Government Relations • Washington, DC

October 10, 2007

Mr. Larry Walker
Director, Wage & Hour Section
West Virginia Division of Labor
State Capitol Complex
Building 6, Room B749
Charleston, West Virginia 25305

Re: Paycards

Dear Mr. Walker:

Thank you for your letter of March 6. We understand that the Division believes the West Virginia Wage Payment and Collection Act should make specific provisions for the use of payroll debit cards ("paycards") for payment of wages before the Division could recognize their use.

We are writing to request the assistance of the Division of Labor in developing legislation that would permit West Virginia employers to offer such cards to their employees, with appropriate safeguards and protections. The APA agrees that payroll debit cards should include important safeguards for workers.

You may not be aware that, in a regulatory environment that does not permit employers to offer paycards, workers will still obtain and use such cards, but at substantially worse terms than had the employer negotiated an appropriate payroll card program on their behalf. Retail organizations have recognized the demand for reloadable prepaid debit cards and are now widely offering such cards to the public. Individuals can now easily purchase such cards and use them to receive their net payroll, without the knowledge or involvement of their employer.

As you know, individuals are less likely to be able to negotiate favorable terms than employers. Even the presumably lowest-cost alternative offered by a nationally known discount retailer appears to cost more than an employer-sponsored card program. The program offered by the national discount organization includes card initiation fees, monthly maintenance fees, card reloading fees, ATM withdrawal fees, account inquiry fees, teller cash transaction fees, operator assistance fees, and periodic paper statement fees, among others.

In any state that does not permit employers to offer paycards, policymakers may lose any ability to enact important employee and consumer-protection provisions. When individuals arrange for reloadable debit cards and use them to receive their net payroll, they would merely ask their employer to set up a direct deposit for their paycheck into the card account. The employer would have no way of knowing that the account is not a conventional bank account. In this case, any employee protection provisions associated with employer-sponsored payroll card programs (such as a requirement for at least one free method of funds access per pay period) would not apply.

We have drafted possible legislative language (below) as a starting point. We would like to work with you and your staff, as well as other interested parties, to ensure that the law affords the broadest possible protections while still encouraging the use of paycards. Please let us know if the Department has any suggestions for the draft bill.

Optimally, we would like to approach the legislature with the support of the Division, or even with the DOL as the sponsoring organization, in the upcoming session. We strongly believe that such a change would be a strong 'win-win' for West Virginia workers and employers, and that your sponsorship would reflect positively on your leadership in the legislature.

Alternatively, we would be happy to work with the Division in a rulemaking process to permit employers to offer paycards to their workers, on a voluntary, opt-in basis and with full disclosure of all terms and conditions that may apply. We are confident that many workers, particularly those without bank accounts, would appreciate the availability of paycards as an alternative, and would appreciate the Division's concern and efforts on their behalf.

Please let me know how you would like to proceed. I look forward to working with you. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Dunn', with a stylized flourish at the end.

William Dunn, CPP
Manager of Government Relations
American Payroll Association
wdunn@americanpayroll.org

West Virginia Possible Amendment to Permit Payroll Debit Cards

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

Every person, firm or corporation doing business in this state, except railroad companies as provided in section one of this article, shall settle with its employees at least once in every two weeks, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services in lawful money of the United States, or by the cash order as described and required in the next succeeding section of this article or by any method of depositing immediately available funds in an employee's demand, debit card or card account, or time account in a bank, credit union or savings and loan institution that may be agreed upon in writing between the employee and such person, firm or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account and the account number: Provided, however, That nothing herein contained shall be construed in a manner to require any person, firm or corporation to pay employees by depositing funds in a financial institution...