



American Payroll Association

Government Relations • Washington, DC

March 26, 2010

Mr. Jeffrey G. Shapiro
Associate Attorney
New York State Department of Labor
W.A. Harriman State Office Campus
Building 12, Room 509
Albany, NY 12240

Via email and U.S. Mail: Jeffrey.Shapiro@labor.state.ny.us

Dear Mr. Shapiro:

We are writing to express concerns about your letter of January 15th regarding payroll cards, and to ask for clarification. The letter states that employers that offer payroll cards as a means of wage payment would be required to provide for an unlimited number of ATM withdrawals or teller withdrawals without the employee incurring fees. The policy described in your letter would effectively be prohibitive. While we applaud the Department's well-intentioned efforts to protect New York workers, we believe that a rule such as described in your letter would instead be very detrimental, both to employers and employees.

The American Payroll Association (APA) is a nonprofit professional association representing more than 21,000 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 by employers in the use of payroll cards as part of their wage payment program. 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.

We reviewed the Division of Labor Standards Guidelines for Direct Deposit of Wages, and believe that the same standards should apply to payroll card programs, i.e., employers should be required to provide at least one free means to obtain all wages each pay period.

We believe that the Department of Labor, once it understands the alternatives available to New York workers, would want the requirements associated with payroll cards to be no more restrictive than those for direct deposit. State laws can define appropriate requirements and conditions that apply to employers who wish to offer these cards, but only if the laws are

reasonable. Otherwise, state policymakers may lose the ability to enact important provisions intended to protect workers. Overly restrictive state laws would lead to an environment in which employees may be unable to obtain a payroll card from their employer. Instead, workers would either have to revert to paper paychecks and costly check-cashing stores, or purchase general-purpose reloadable debit cards at retail outlets and ask their employer to direct-deposit their pay into their general-purpose debit card account.

Employers can not distinguish these accounts from conventional bank accounts, and would initiate direct deposits of wages to the general purpose reloadable card accounts as though they were conventional bank accounts. Any costs of setting up and maintaining the card accounts would be entirely borne by the worker, and the employer would have no responsibility for the card features, terms, conditions or costs.

Interested DOL officials may wish to stop at a gift-card/debit-card display in a retail store to read the fees and terms that apply to general-purpose reloadable cards. In contrast, employer-provided regulated payroll cards involve no costs to the employee for issuing the card (replacing lost cards may involve a fee), or for reloading the card with net payroll. Employer-sponsored payroll cards are likely to have more favorable terms and conditions and far lower costs.¹

Any requirements applicable to employer-sponsored payroll card programs (such as requiring one free transaction per pay period) would not apply to a general purpose reloadable debit card purchased at a retail store. Neither would general purpose reloadable debit cards include critical consumer protections enjoyed by payroll cardholders, including coverage by Regulation E (Reg. E) and FDIC protection at the cardholder level.

Only payroll debit cards have been singled out by the Federal Reserve Bank as being subject to Reg. E, which includes many important consumer protections. If a payroll card is used fraudulently, the cardholder is only liable for up to \$50 in fraud losses, and many payroll card issuers have zero-loss policies that protect cardholders from any losses. Regulation E requires (and all “Branded” (i.e., VISA, Mastercard or similar logo) cards provide) dispute resolution procedures to protect cardholder spending. For example, employees using payroll cards to buy products over the Internet can get their money back if the goods are defective or not delivered.

¹ The following is a summary of the differences between general purposes reloadable debit cards and employer-provided payroll cards.

General Purpose Debit Cards	Employer-Provided Payroll Cards
<ul style="list-style-type: none"> • Not covered under Reg E • Purchased at retail locations • Monthly maintenance fees may apply • Fees to reload the card may apply 	<ul style="list-style-type: none"> • Covered by Federal Reserve Bank under Reg. E • Covered under FDIC up to \$250k per cardholder. • No fees to activate or load wages to the card each pay period • Fraud losses limited to \$50 or less • Requires periodic account statements be provided • Requires clear disclosure of all terms, conditions, and fees

Reg. E also requires that periodic account statements be provided to payroll cardholders. Many payroll cardholders undoubtedly benefit from being able to track their spending for the first time. Indeed, payroll cards are acknowledged to be an effective way to introduce unbanked individuals to modern banking services, which is a critical first step to improved financial security. Reg. E also requires all terms, conditions and fees to be clearly disclosed, permitting payroll cardholders to easily understand how to use the card to their best advantage. Recent studies have concluded that when used wisely, payroll cards are the most inexpensive way to enjoy all the benefits of a traditional bank account.²

A recent ruling by the Federal Deposit Insurance Corporation (FDIC) also clarified that payroll cards are covered under FDIC insurance for up to \$250,000 per cardholder.

Obviously, the other alternative is paper paychecks. Payroll cards are much safer and cheaper than the alternative of check-cashing stores (which charge an average 2.5% of the face value and result in workers carrying their entire net earnings in cash, subject to loss or theft). We understand that most of the volume and fees of the check cashing industry are derived from payroll checks. Employees who are given the option to use payroll cards are automatically able to avoid this costly option.

In summary, any requirement for unlimited free ATM and/or teller access for payroll card holders would make payroll cards prohibitively costly, and thus unavailable to New York workers. This would understandably upset many New York workers, who would be faced with the alternatives of either going back to paper paychecks and high-fee check-cashing stores, or purchasing a general-purpose reloadable debit card from a retailer, and paying additional fees each pay period for reloading the card. Employers would have no control over the terms and fees associated with such cards, and no knowledge of the nature of the account or the fees being paid by their workers.

No other state has adopted a requirement for unlimited free ATM and/or teller access for payroll card holders. New York law requires full access to wages without cost to the employee. It does not require employers to pay for unlimited personal banking costs of workers. By instituting a simple requirement for one free means to obtain all wages, the Department can ensure that New York residents have access to their full wages without discount. To go beyond that would be counterproductive, and would harm the very workers that the Department is trying to protect. We ask that the Department clarify its position regarding payroll cards, by requiring at least one free means to obtain all wages.

We appreciate this opportunity to provide input for the Department's consideration, and would be happy to meet with the Department or to provide additional information.

Sincerely,

Cathy Beyda, Esq.
American Payroll Association
Chair, Paycard Subcommittee, Government Affairs Task Force

² Office of the Comptroller of the Currency, Community Affairs Division: *Payroll Cards: An Innovative Product for Reaching the Unbanked and Underbanked*, June 2005.



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