PAY CARD Special Section

A CLOUDY 2014 PAYCARD CLIMATE

APA ACTIVELY INVOLVED IN ITS CLEARING

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In last issue's Government Corner article, APA's Director of Government Relations Bill Dunn, CPP, discussed several paycard bills pending in state legislatures across the country. By mid-January, legislation affecting paycards had been introduced in 10 states.

2014 is proving to be the busiest year yet for paycard legislation. What gave rise to the increased legislative activity? Will the increased attention given to paycards help employers wishing to expand their electronic wage payment programs or hinder their efforts? How can the APA and its members work to ensure that these and future legislative initiatives give rise to appropriate consumer protections and not unduly restrictive provisions?

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What Prompted Increased Interest?

The increased legislative interest in paycards was prompted, no doubt, by media reports declaring that employees are being forced to receive their wages on paycards laden with hidden fees. These reports, which have been covered fully in previous PAYTECH articles, claimed that paycard fees deprive employees of full and free access to their wages and rob the nation's most vulnerable workers of their hard-earned minimum wage. Federal and state policymakers quickly picked up on the issue and swung into action (read more in this issue's accompanying paycard feature on page 51).

Is Increased Legislation a Good Thing?

Whether increased legislation governing paycards is a good thing will depend, of course, on what the legislation seeks to accomplish. It is imperative that employers be provided with clear guidance on what is expected of them under the state wage and hour laws. For example, does state law permit private-sector employers to implement purely electronic wage payment programs (i.e., those giving employees the choice between direct deposit and paycards), or must these employers also offer their employees a paper paycheck? If electronic wage payment must be voluntary, must employers pay by check unless employees affirmatively opt into the program, or may employers pay their employees electronically until the employee opts out? Without clear legislative or administrative answers to these and similar questions, employers are left to interpret (and at times, guess) what is expected of them.

But legislative guidance must be limited to effectuate the public policy favoring full and prompt payment of wages. To this end, legislation that treats paycards like other forms of wage payment and requires full and free access to wages each pay period is a good thing. Reasonable consumer protections, such as clear disclosures and free access to account information, also benefit employers and employees alike. However, legislation that imposes more onerous restrictions on paycards than other payment instruments, and legislation requiring employers to provide free banking services to their employees, will discourage employers from offering paycards and, in so doing, hurt the very employees it seeks to protect. Such legislation is, in essence, a de facto ban on paycards.

APA's Response to Recent Initiatives

The APA's Paycards Subcommittee of the Government Affairs Task Force (GATF) has been working diligently to ensure that paycard legislation continues to develop under appropriate and reasonable conditions. Our outreach to policymakers so far this year has reinforced our belief that many legislators have fallen victim to sensationalized media accounts and other misinformation. As such, much of the subcommittee's efforts have focused on dispelling paycard myths. These myths most commonly relate to paycard fees, employee choice, a perceived lack of existing regulation, and whether paycards actually benefit employers and their employees. Let's look at each of these myths.

Paycard Fees Myth

With respect to paycard fees, the popular media has done a good job of convincing policymakers that virtually every transaction made with a paycard will result in a fee being charged to the employee. This is simply not the case. When addressing the issue of fees with policymakers, we are able to point to several studies that counter this myth. For example, one study by the Federal Reserve Bank concludes that paycards are the most cost-effective transaction accounts available for consumers without bank accounts. They are less costly than checking accounts and general purpose prepaid debit cards, and less than one-fifth the cost of check-cashing services. Another Federal Reserve study revealed that employees can, and many do, use paycards without ever incurring a fee.

Employee Choice Myth

Some legislators also seem convinced that employers wish to mandate paycards as the only payment option for all of their employees. We spend a great deal of time explaining that paycards are intended to complement direct deposit, not replace it, and that we recognize direct deposit as the best solution for a majority of workers. We also point to federal banking law, specifically the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, which prohibit employers from mandating the use of paycards. Under Regulation E, employers that offer paycards must also offer at least one other payment method. State law dictates whether paper paychecks must be offered. Thus, any employer mandating the use of paycards alone already is violating legal requirements.

Paycards Are Unregulated Myth

This brings us to a third common myth: that paycards currently are unregulated, allowing financial institutions and employers to take advantage of unsuspecting employees without consequence. The bulletin issued by the Consumer Financial Protection Bureau in September 2013 has helped dispel this myth to some extent. In addition to making clear that federal law (again, the EFTA and Regulation E) already prohibits employers from mandating paycards alone, the bulletin identifies several consumer protections that must be provided by financial institutions that issue paycards. These include a number of different disclosures, limited liability for unauthorized transfers, error notification, and limits on overdraft fees.

In addition, the wage and hour laws in most states already require payment of full net wages, without discount, on designated paydays. This requirement often applies to all payment methods. Restricting the use of paycards because some employers fail to comply with existing wage and hour law is not the answer.

Paycards Are Not a Benefit Myth

Finally, the APA GATF subcommittee is still taken aback by legislative initiatives that would expressly outlaw the use of paycards, or act as a de facto ban on their use, because the sponsor believes that paycards offer no benefit to employees whatsoever. Remarkably, one legislator in New Hampshire recently published an editorial suggesting that paycards are unnecessary because direct deposit is available to all employees ("there is no barrier to opening an account").

In response to these claims, we are able to point to recent pronouncements by consumer advocates who recognize that paycards offer a very valuable solution for many workers. For example, in January of this year, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, published an op-ed emphasizing that "payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much-needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation."

Of course, we also point to the press release that the APA published with the National Consumer Law Center in July 2013. The press release stated:

"Though we represent different constituencies (low-income consumers and payroll administrators), we agree that payroll cards can offer unbanked workers an economical, safe, and convenient way to receive their wages. For these workers, payroll cards can mean no check-cashing fees, greater security without the risks of cash, access to pay despite natural disasters, and the ability to make purchases over the Internet and by telephone."

What Can You Do to Help?

APA members can do a great deal to help educate legislators and other policymakers, and to help ensure that appropriate but not overreaching protections are provided on paycards. Specifically, the APA GATF could use your help testifying at hearings or submitting letters in response to legislative initiatives. Employee testimonials would be extremely helpful. Often, those who testify in opposition to overly restrictive paycard legislation or in favor of positive legislation are banks, paycard vendors, and employer groups (but not individual employers). This can reinforce the erroneous belief that paycards are simply a means for the financial services industry to make more money and for employers to save money to the detriment of their workers. Legislators frequently ask, "If employees enjoy payroll cards so much, why aren't they here telling us about it?"

We understand that there are legitimate reasons why an employer may be hesitant to speak with legislators and regulators about its use of paycards, particularly in states where the law is unclear. Without such testimony, however, it is difficult to counter some of the uninformed arguments made by policymakers. Moreover, there are ways that you can share your experiences without specifying the name of your company or any particular employee.

> Join the APA's Paycards Subcommittee. Contact Bill Dunn, CPP, at APA.

For example, in a recent letter opposing a restrictive bill in Hawaii, we included the following unattributed account from an APA member:

"When 9/11 happened and no planes were flying from the mainland or between the islands, payroll checks/pay advices printed on the mainland had no way to get to employees on payday. Paycards offer the ability to provide timely pay as part of the company's disaster recovery plan. We also utilized paycards as part of our disaster recovery plan when tsunamis and similar weather conditions approached. Taking this option away would deny employers a viable method for ensuring that their employees receive wages in a timely manner, no matter what."

Consider joining the APA's Paycards GATF Subcommittee to see how your organization can help. If your company has a government relations department, reach out to those employees to see if they are willing to get involved. If you are unable to join the committee but are willing to participate in a letter-writing campaign, provide employee testimonials or simply willing to share your stories, contact Bill Dunn, CPP, or one of us. Your assistance would be greatly appreciated. ▯