



PAYSTATE UPDATE

The Latest State and Local Payroll Compliance News from the American Payroll Association

Volume 16 Issue # 13 June 23, 2014

Paycards Remain a Concern for Federal, State Governments

On May 9, several interest groups submitted a letter to the federal Consumer Financial Protection Bureau (CFPB) and U.S. Department of Labor (DOL) expressing concerns with paycards. The APA responded on June 5, sending a letter to CFPB Director Richard Cordray that addressed some of these concerns and stated an interest in working with the CFPB and other interest groups to increase awareness and promote mutually agreeable best practices for paycards.

On June 12, *New York State Attorney General (AG) Eric Schneiderman* issued a report critical of paycards [NY AG, *Pinched by Plastic: The Impact of Payroll Cards on Low-Wage Workers*, 6-12-14]. The AG also requested that a bill regulating paycards be introduced in the state senate. S.B. 7790 was introduced on June 9 and a companion bill was introduced in the Assembly on June 10 (A.B. 10056).

APA to CFPB – let's work together

The APA explained that “existing legal requirements provide appropriate consumer protections and ensure that employees have full and free access to their wages.” Problems can arise when employers are unaware of legal obligations under federal and/or state laws and employees don't understand how to use paycards properly. The solution for both employers and employees is education, rather than additional regulations. The APA would welcome the opportunity to work with the CFPB and interest groups to increase public awareness of legal requirements, develop education materials, and promote mutually agreeable best practices.

Addressing concerns

The APA also directly addressed a few of the concerns raised by the interest groups in their letter to the CFPB, including:

Full and free access to wages. Employees must be able to treat their paycard like a plastic paycheck and cash out their net wages each pay period, to the penny without cost. However, prohibiting fees for a number of discretionary banking services (such as ongoing maintenance of dormant accounts, replacement cards, processing of declined transactions, etc.), as the interest groups are requesting, is not required with respect to any other method of wage payment and is unrelated to the payment of full net wages.

Choice of wage payment method. The APA thanked the CFPB for issuing its September 2013 Bulletin reaffirming that employers are prohibited from requiring paycards as the sole method of wage payment (see PAYSTATE UPDATE, Issue No. 19, Vol. 15). This type of guidance and education is necessary because employers are not always aware that wage payment requirements are included in federal banking laws. However, the APA does not think it is necessary to require employers to offer paper paychecks given many employees' reliance on expensive check cashing services to access wages.



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Default to paycards. The interest groups expressed concern about employees who are defaulted into payroll card programs. Sometimes a default method of wage payment is necessary to accommodate situations where employees fail to make a payment selection. In states that permit purely electronic wage payment, default to a paycard program is appropriate when employees have received information about the program (including possible fees) and have been notified that failure to provide information necessary to establish direct deposit will be deemed an election to receive wages via paycard.

Access to account information. Employee access to account information is crucial and covered in existing federal wage and hour laws and Regulation E. Some state wage and hour laws also require that employees be provided with access to their paycard balance without cost. Regulation E requires card issuers to provide account information using periodic statements. Contrary to the assertions of the interest groups, written and electronic transaction histories made available as part of the alternative to periodic statements must contain all of the information required for periodic statements, including fee summaries.

New York AG issues report, proposes legislation

The AG's report acknowledges the advantages of paycard use for both employers and employees, "including cost savings for employers and convenience and lowered expenses for those employees who might otherwise use check cashing outlets." The report also mentions the environmental benefits and ability to be able to deliver wages during a storm or disaster. However, the report ultimately concludes that paycards "can present serious problems for employees, especially low wage or limited English proficient workers, and those without Internet and smart phone access."

Based on requests from the AG, 38 national and regional employers voluntarily submitted information on their use of paycards. The report does not list employers by name.

Legislation proposed. AG Schneiderman proposed the "Payroll Card Act" to address the supposed shortcomings in the paycard programs discussed in the report. The Act would require employers to allow employees to elect whether to be paid by paycard, direct deposit, or paper check; mandate that employees receive clear and appropriate notice of program terms and conditions, including potential fees and how to avoid them; prohibit employers from using paycard programs that charge certain types of fees; and require employers to use programs with at least one network of ATMs where employees can access wages without paying a fee. It is likely the legislation will be amended while under consideration in the state legislature.