



PAYROLL CURRENTLY

The Compliance Publication from the American Payroll Association

Inside Washington

August 5, 2016

APA Continues to Oppose New York's Proposed Wage Payment Regulations

The New York State Department of Labor's (the Department) revised rulemaking on wage payments shows no improvement over the original rule, according to comments APA recently submitted to the Department (http://info.americanpayroll.org/pdfs/gov/APA_comments_nysdol.pdf).

"At the outset, the APA is deeply concerned by the Department's confirmation that it plans to invalidate existing payment authorizations for covered employees who currently receive their wages by direct deposit or a payroll debit card," APA wrote. "Obtaining new consents from each and every covered employee would be an extremely burdensome process that is likely to confuse and harm more workers than it benefits.

"The APA also is concerned that the payroll debit card provisions of the Revised Rule continue to present a number of compliance challenges for employers. Several provisions are so vague or unclear that they fail to put employers on notice of what they must do to comply. Other provisions are overly burdensome and go well beyond providing full and free access to wages. Finally, the Revised Rule continues to make employers responsible and liable under the Labor Law for financial service functions beyond their control."

In early July, APA conducted a membership survey to determine the effect the Revised Rule would have on employers that pay employees in New York. Less than one-third (29.7%) of respondents who use payroll cards in New York said that they were either likely, very likely, or certain to continue to use payroll cards in the state if the rule goes into effect. Another 20% said that the rules were so burdensome that they would either definitely stop or were likely to stop offering payroll cards in New York.

New electronic pay authorizations

In the Department's own comments on the Revised Rule, it declared that existing consents to direct deposit and payroll debit cards will only be valid if they comply with the notice and consent requirements of the new rule. "Because the Revised Rule includes a number of new requirements," APA wrote, "it is unlikely that any existing authorizations for covered employees will remain valid."

According to comments from survey respondents, not only is the need for new authorizations a solution for a nonexistent problem, it is very likely to cause significant hardship to both employers and employees. Respondents noted that: (1) employees like receiving their wages electronically; (2) obtaining new consents will impose a significant, unnecessary burden on employers and employees; and (3) some employees will not return new consent forms and will be defaulted to paper paychecks against their will.



PAYROLL CURRENTLY

The Compliance Publication from the American Payroll Association

Inside Washington

August 5, 2016

Employees who are defaulted to a paycheck may have insufficient funds in their accounts to cover automatic bill payments, including a mortgage or car payment. Moreover, they may be reverted to paychecks permanently if the employer decides obtaining new consent or complying with the new rules is too burdensome.

The added burden is especially apparent in the case of payroll cards. The proposed rule would require employers to wait seven business days after obtaining employee consent before paying wages using a payroll debit card. Less than one-third (29.91%) said that this requirement would *not* present a problem for their company.

Survey respondents have three main concerns with the seven-day waiting period. First, tracking the authorization forms and ensuring that they are not inadvertently processed will be difficult. This is particularly true for employers that use employee self-service systems. Second, respondents were frustrated that the wait unnecessarily denies employees the ability to make their own payment decisions. Third, the wait eliminates an important function and use of payroll debit cards, namely, the ability to use the card to make immediate payments upon request and in times of emergency. Many APA members have used payroll debit cards to distribute wages to employees after 9/11, hurricanes, snowstorms, and tornados.

Responsible for actions of third parties

With regard to payroll cards, APA members are concerned that New York will hold them responsible for issues over which they have little or no control. In particular, these include access to ATMs, notice of changes in terms, and fee prohibitions. Employers offering payroll cards must ensure that at least one ATM offering unlimited free withdrawals is located within a “reasonable distance” from the employee’s workplace or home. APA members point out that they would need to rely on the card provider to maintain compliance with this and other provisions pertaining to the services the card provider offers to the cardholders. In many cases, it may be impossible for the employer to ensure compliance, yet the proposed rule would hold the employer responsible rather than the card provider.

Requirements are burdensome and vague

The Revised Rule requires employers to provide employees with notice of specified information, and obtain the employee’s consent, when paying wages by direct deposit or by a payroll debit card. The notice and consent must be provided in English and in the primary language of the employee when a template notice and consent in such language is available. The Department will provide templates in English, Spanish, Chinese, Haitian Creole, Korean, Polish, and Russian.



PAYROLL CURRENTLY

The Compliance Publication from the American Payroll Association

Inside Washington

August 5, 2016

More than a quarter (28.5%) say that this requirement would “cause their company to seriously consider whether they should offer or continue to offer payroll cards to employees in New York.” APA said that, “Despite the Department’s insistence ... to the contrary, the Revised Rule does not itself address what happens when there is no template available in the employee’s primary language. Nor does it address what language must be used when the employer prepares its own notice and consent forms.”

New York has four options it may take by August 24. The Department may issue a final rule, withdraw the rule, or take no action, in which case the rule would expire. Or it may issue another revised rule, which would trigger another 30-day comment period.