



PAYROLL CURRENTLY

The Compliance Publication of the American Payroll Association

Inside Washington

March 3, 2017

New York Revokes Onerous Wage Payment Regulations; Massachusetts Considers Introducing Similar Bill

Issues surrounding payroll cards are still up for debate across the country. Two states – New York and Massachusetts – are trying to change their laws and regulations.

New York paycard regs stopped

Payroll professionals have reason to celebrate since word broke on February 16 that the New York Industrial Board of Appeals (Board) revoked regulations that would have imposed burdensome restrictions on the use of direct deposit and payroll cards. Global Cash Card, a national provider of payroll debit cards, championed the effort for the industry with its complaint to the Board (see “Inside Washington” for November 2016). APA also opposed the regulations as overly and needlessly burdensome and had requested that the NYSDOL delay implementation due to problems with the rollout of special notice-and-consent templates (see “Inside Washington” for February).

The rules, proposed by the New York State Department of Labor (NYSDOL), were scheduled to go into effect on March 7. NYSDOL has until April 16 to appeal. If NYSDOL wins its appeal, it can request that the rules be reinstated.

The Board found “the regulations are invalid because they exceed [NYSDOL’s] rulemaking authority,” adding that “the regulations go beyond regulation of the employment relationship and into the area of banking law, which is outside [NYSDOL’s] competence and expertise in the regulation of employment and occupational safety and health.” Financial institutions in New York are regulated by the Department of Financial Services (DFS). APA believes that if DFS were to issue similar regulations it would likely run into problems, because the employment relationship is outside of its authority.

The Board also noted that the New York legislature has considered “at least eight bills on [the] identical subject matter as the regulations” without passing any of them. APA looks forward to working with business stakeholders to encourage the legislature to revisit these bills and enact reasonable provisions.

Massachusetts to introduce bill

Even as APA’s Government Relations Division celebrates the developments in New York, it is casting a wary eye toward Massachusetts, which is considering a bill that largely mirrors the New York regulations (S. 1008, <https://malegislature.gov/Bills/190/S1008>). The Massachusetts legislature is not overstepping its authority by proposing this legislation, but APA’s opposition to the proposal is consistent with its New York position.

S. 1008 would impose a seven-day cooling-off period between the time an employee requests or agrees to be paid by payroll card and the time the employer takes action to issue a payment to that card. Notice and consent forms would need to be issued in multiple languages. Free banking services would need to be provided to payroll card holders. Identical provisions in the New York regulations caused some employers to stop using payroll cards in New York, while card providers considered whether to cease offering their services in New York.



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Currently, Massachusetts statutes and regulations on payroll cards apply to employment, placement, or staffing agencies. If the legislature amends its law to regulate payroll cards for all employers, APA will encourage measures that provide consumer protections for employees without threatening the viability of the payment method.