



PAYROLL CURRENTLY

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APA Asks New York Legislature to Address Payroll Cards

In early June, APA wrote to the leadership of the New York State Assembly and Senate urging them to support two payroll card bills (http://info.americanpayroll.org/pdfs/gov/APA_Support_for_NY_A6771A_S5208A.pdf). New York already recognizes payroll cards as a legitimate method of paying wages. Assembly bill 6771-A and its Senate companion bill 5208-A “would provide clarity on the use of payroll cards in the State of New York,” APA wrote. “While the legislation goes further than the APA would like in a couple of respects, it would ensure that employees are provided important consumer protections, including full and free access to their wages, and provide employers with clear guidance regarding their responsibilities under the Labor Law.”

The three key provisions of the bills are: (1) employees would need to consent to the payment method, after being advised of all of their wage payment options; (2) employers would be responsible for ensuring that employees had the ability to receive their full wages without incurring a fee each pay period; and (3) the fees associated with the cards would be limited and would need to be fully disclosed to employees.

Bills address criticism

APA said that the bills directly address claims made by critics about payroll cards, including consumer advocates, unions, and the New York Attorney General’s office. These critics have complained that employees are not given a true choice over their payment method. The proposed legislation would not only require that employees voluntarily choose to be paid on a payroll card, it would also codify their right to rescind that consent and change to a different payment method the employer offers (e.g., direct deposit or paper check). The bills go even further, APA explained, “by making it abundantly clear that paychecks (or cash) are the default method of paying wages in New York.”

Regarding claims that employees cannot obtain their pay without incurring fees, APA pointed out that the options for withdrawing cash from a payroll card for free are widely available. Nearly all payroll cards are branded by either Visa or MasterCard. Visa partners with more than 90,000 financial institutions across the country and more than 5,400 in New York, each of which will allow cardholders to withdraw their wages for free at a teller window. Employees who do not withdraw all of their money from their accounts have options, including point-of-sale, online, and telephone transactions. Many merchants already provide cash back at the point of sale, without charge, and the proposed legislation would also prohibit issuer fees related to point-of-sale transactions. The proposed legislation acquiesces to those critics who demand that because a payroll card can be used to withdraw cash from an ATM, such use must be provided for free. The bills would require that the cards be associated with an ATM network and provide employees with one free in-network ATM withdrawal each week.

ATM fees are not the only fees that might apply to a payroll card, and the bills also address those. Fees for participating in a payroll card program, transferring wages



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from the employer to a payroll card account, or maintaining a payroll card account are prohibited. Card programs would need to provide employees with two ways to check their account balances for free as well as access to their account transaction histories. Specific criticism of “hidden fees” is addressed by requiring that employers disclose not only all of the fees that might be charged by the card issuer but also notify employees that third parties may charge additional fees. APA noted that “[t]his is in addition to the fee disclosures that already must be provided by the card issuer under federal banking law.”

New York would become the second state to require free ATM withdrawals for payroll cards, although with a different frequency. In May, Pennsylvania's legislation requiring one free ATM withdrawal each pay period went into effect. New York would require a free ATM withdrawal each week.

While APA supports these bills, “APA has consistently opposed legislative and regulatory proposals requiring free ATM withdrawals or prohibiting inactivity fees on payroll card accounts.” Federal wage and hour laws address full and timely payment of wages. As a practical matter, ATM withdrawals are made in \$10 and \$20 increments only, so wages cannot be drawn in full. In addition, inactivity fees are easily avoidable and only come into play after wage loads and other activity in the account have stopped. Further, in fairness to all employees, employers should not be required to provide payroll card users with free discretionary banking services (and be subject to penalties for failing to do so).

Bill opposition

Rumor has it that New York Attorney General Eric Schneiderman asked Assembly and Senate leadership to avoid moving ahead on the bills while the payroll card regulations are tied up in the courts. For the past three years, the New York State Department of Labor has been working on regulations to govern the use of payroll cards. APA opposes those regulations as unduly burdensome and restrictive. The New York Industrial Board of Appeals prevented the regulations from going into effect. Now, the fate of the regulations rests in the hands of the New York State Supreme Court (see “Inside Washington” for May).

APA believes that the state legislature should enact more reasonable legislation that would make the regulations moot. However, even if the bills pass, Gov. Andrew Cuomo might consider vetoing the legislation while his executive branch litigates the case over the regulations.