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APA Prefers One Massachusetts Payroll Card Bill Over Another

The Massachusetts Joint Committee on Labor and Workforce Development is working to reconcile legislation proposed in the Massachusetts House (H.B. 3135) and Senate (S.B. 1008) that would regulate the use of payroll debit cards. The Joint Committee's work thus far has focused on amending the Senate bill. In December, APA issued a statement to the Joint Committee members requesting that they stop what they were doing and start over with the House bill [http://info.americanpayroll.org/pdfs/gov/APA_Comments-MA-S1008.pdf]. The statement was drafted by APA's Government Relations Task Force Subcommittee on Payroll Cards.

Troublesome origins for S.B. 1008

The Senate bill drew its language directly from New York's controversial wage payment regulations, which were overturned by the New York Industrial Board of Appeals and which are subject to an ongoing court case (see "Inside Washington" for May 2017). APA opposed the New York regulations as well as the original version of S.B. 1008.

In its statement, APA noted that the "Joint Committee's markup of S.B. 1008 addresses some of the concerns raised by the APA in our May 2, 2017, Statement in Opposition to S.B. 1008" (http://info.americanpayroll.org/pdfs/gov/APA_Statement-MA-H3135-S1008.pdf). Still, APA is concerned that the S.B. 1008 markup retains a number of unduly burdensome requirements on employers and payroll card providers that will discourage use of the payment method in Massachusetts.

Issues with provisions

The S.B. 1008 markup continues to require that employers provide their employees with "local access" to wages at no charge. Local access is defined to mean access to wages "at a facility or machine which is located within a reasonable travel distance to the employee's work location or home." Reasonable travel distance is not defined, leaving employers with little guidance as to what is needed to comply.

APA contends that tracking the precise locations of free cash access relative to each employee's home or workplace is difficult, at best. APA also noted that, while S.B. 1008 would recognize ATMs as a source of "local access," the machines cannot provide employees with *full* access to wages, because ATMs typically disburse funds in \$10 or \$20 increments.

The bill's notice requirements also pose a problem for employers and may indicate that the provisions were lifted directly from the New York wage payment regulations without sufficient scrutiny. Although S.B. 1008 is intended to regulate payroll cards, it includes a provision that would guarantee free access to wages for employees who use direct deposit. Fees and locations of free cash access associated with direct deposit are matters between employees and their financial institution.

The bill "arguably requires the employer to provide access to a list that includes every ATM, financial institution, grocery store, and other establishment within



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reasonable proximity where the employee could access wages without charge,” APA said. “Employers do not have access to this information. As such, it would be difficult, if not impossible, for an employer to satisfy these notice requirements in the context of traditional direct deposit.”

APA also said the provisions regarding the notice and consent templates are vague. As New York attempted, Massachusetts would require that notices regarding employee rights and forms showing employee consent be provided in English and in the primary language of the employee “when a template notice and consent in such language is available.”

“The APA supports provisions requiring that employees be provided advance notice of the terms and conditions of their wage payment options,” APA said. Still, regarding the templates, APA feels once-burned, twice-shy about supporting a process without first seeing the templates. The templates proposed in New York did not comply with regulatory requirements, were difficult to incorporate into an employer’s electronic onboarding process, and contained significant errors. The bill’s effective date – 90 days after passage – would leave the labor commissioner little time to develop templates.

The S.B. 1008 markup continues to prohibit fees for discretionary services that are not necessary for full and free access to wages. APA is also concerned that the bill could “prohibit almost any fee associated with payroll debit card accounts without putting employers on clear notice that a particular fee is prohibited.”

S.B. 1008 also incorporates language from federal banking Regulation E into the commonwealth’s wage payment statutes. This will lead to various complications, including a conflict with Massachusetts banking regulations.

Massachusetts should rely on H.B. 3135

APA continues to support H.B. 3135, believing the bill imposes reasonable restrictions on the use of payroll debit card accounts while ensuring that payroll cards offered in Massachusetts carry important consumer protections. APA said, “To the extent that the Joint Committee feels that legislation addressing payroll debit cards should address additional issues, we urge the Joint Committee to work off H.B. 3135 rather than a bill modeled after controversial regulations that present numerous challenges and would be difficult to implement.”