

Time Is Money: A Quick Wage-Hour Tip on ... Offering a Compliant Payroll Debit Card Option to Employees

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In an increasingly cashless society, many employers are considering moving to payroll debit cards to provide workers with greater flexibility and convenience.

However, employers considering offering payroll debit cards should be aware of a number of potential pitfalls associated with the technology, ensuring that their payroll debit card plan is compliant with relevant state laws.

Why Use a Payroll Debit Card?

There are a number of benefits associated with payroll debit cards both for employers and employees. Employers can benefit from payroll debit cards by avoiding the cost of printing and mailing paychecks for all participating employees. Payroll debit cards are helpful for employees who do not have bank accounts and wish to avoid check cashing fees or other fees associated with maintaining a bank account. Additionally, payroll debit cards may provide a nimbler mechanism for employers who desire to offer a more flexible pay period option for employees, such as daily or instant pay.

State Wage Payment Laws Applicable

When considering offering a payroll debit card option for employees, perhaps the first thing employers should understand is that it must be just that – an option. Like direct deposit, offering employees the option of receiving their earned wages through a payroll card does not relieve employers of their responsibility to provide any required payroll options. In addition to state law, the Consumer Financial Protection Bureau published a [bulletin](#) advising employers that they may not require employees to receive wages via payroll card.

Similarly, offering a payroll debit card option does not relieve employers of any wage statement responsibilities they may have under state law. Under [New York law](#), for example, employers must make a wage statement available to employees each pay period that includes “the name of the employee; the name of the employer; address and phone number of employer; rates or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage” among other things.

State Laws and Fees

Other than continuing to provide any required alternative methods of payment and complying with state laws regarding wage statements, the largest risk associated with providing payroll debit cards comes from fees associated with the use of the cards.

Many states have laws that regulate payroll debit cards, and most of those states have laws restricting fees related to the use or participation in payroll card programs. The types of regulations state laws impose on payroll debit card fees include whether or not employees may be charged an entry fee to begin participating in the payroll debit card program, whether or not and when employees may be charged for accessing the funds on the payroll debit card, whether or not employees may be charged to use the payroll debit card at point-of-sale, and whether or not employers may charge for declined transactions. Other states like California have not expressly codified payroll debit card laws, but have released [opinion letters](#) analyzing their requirements.

Examples of a few states' laws illustrate the concerns:

- **Illinois:** Illinois's payroll debit card law requires employers to provide employees with a "clear and conspicuous written disclosure" advising them that participation in the payroll card program is voluntary, and informing them of all the other methods of payment the employer offers, and explaining the terms and conditions of the payroll card option including: "(i) an itemized list of all fees that may be deducted from the employee's payroll card account by the employer or payroll card issuer; (ii) a notice that third parties may assess transaction fees in addition to the fees assessed by the employee's payroll card issuer; and (iii) an explanation of how the employee may obtain, at no cost, the employee's net wages, check the account balance, and request to receive paper or electronic transaction histories, as provided in item[.]" While the language in item "i" leaves open the possibility that *some* fees may be permissible, the law also states that "an employer may not use a payroll card program that charges fees for point of sale transactions, the application, initiation, loading of wages by the employer, or participation in the payroll card program." Illinois's law requires employers to offer the employee a declined transaction, "at no cost to the employee, twice per month." Illinois law also permits employers to impose "commercially reasonable" fees that are "limited to cover the costs to process declined transactions" on subsequent declined transactions within that particular month, but prohibits the payroll debit card from being linked to any form of credit including overdraft fees, overdraft service fees, and or loans and cash advances." See [820 ILCS 115/14.5](#).
- **New York:** New York's payroll debit card law also requires employers to get employees' consent at least seven days prior to the start of an employee's participation in a payroll debit card program. The law prohibits employers from charging employees, directly or indirectly, for (1) the application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card; (2) point of sale transactions; (3) overdraft, shortage, or low balance status; (4) account inactivity; (5) maintenance; (6) telephone or online customer service; (7) accessing balance or other account information online, by interactive voice response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee; (8) providing the employee with written statements, transaction histories or the issuer's policies; (9) replacing the payroll debit card at reasonable intervals; (10) closing an account or issuing payment of the remaining balance by check or other means; (11) declined transactions at an automated teller machine that does not provide free balance inquiries; or (12) any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the

terms and conditions of the payroll debit card provided to the employee. New York's payroll debit card law also prohibits employers from linking debit card accounts to credit, including loans or cash advances, but the law does permit the *employer* to cover an "occasional inadvertent" overdraft transaction, if the employee is not charged for it. The law also prohibits employers from allowing earned wages delivered through a payroll debit card from "expiring" although employers are permitted to close accounts for inactivity provided employees are given reasonable notice and the remaining funds are refunded within seven days. [12 CRR-NY 192-2.3](#).

- **Pennsylvania:** Pennsylvania also has a law governing the use of payroll debit cards. Pennsylvania's law requires employers to establish a payroll card account at a financial institution whose funds are insured by the Federal Deposit Insurance Corporation or the Nation Credit Union Administration. The law requires employee consent to opt into a payroll card account program, and to give notice written notice of: (i) all of the employee's wage payment options; (ii) the terms and conditions of the payroll card account option, including the fees that may be deducted from the employee's payroll card account by the card issuer; (iii) a notice that third parties may assess fees in addition to the fees assessed by the card issuer; and (iv) the methods available to the employee for accessing wages without fees. The law also requires employers to allow employees to make "at least one withdrawal each pay period for any amount up to and including the full amount of the employee's net wages for that period or one such withdrawal weekly if the employee is paid more frequently than weekly" and "one in-network ATM withdrawal each pay period or one such withdrawal weekly if the employee is paid more frequently than weekly." [7 P.S. § 6122.1](#).

What Employers Should Do

Employers considering implementing a payroll debit card program should closely scrutinize any applicable state and federal laws. Depending on the state, this may mean ensuring the availability of alternative wage payment methods, obtaining the employees' written consent, providing written notice of participating employees' rights, and avoiding illegal fees. In addition to state wage and hour laws, employers should analyze local banking laws to ensure that their payroll debit card program may not be considered a loan and covered by state banking laws.

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