

## **New York Publishes Final Rules on Wage Payment Methods**

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On September 7, 2016, the New York State Department of Labor published final regulations on the methods by which employees must be paid, including with respect to direct deposit of wages and payroll debit cards. The regulations become effective on March 7, 2017.

### **Direct Deposit**

New York first legislated the method of payment of wages in the late 1800s, when it required that wages be paid in cash and (for manual workers) weekly. For decades, New York has allowed employers to pay wages by direct deposit, but only with employee consent. (Labor Law 192(1) currently states that “[n]o employer shall without the advance written consent of any employee directly pay or deposit the net wage or salary of such employee in a bank or other financial institution.”) Consent is not required from individuals employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of \$900 a week.

The new regulations require employers to provide a written notice of rights (discussed below) and to receive written consent from employees before paying wages by direct deposit, and such consent “must be maintained by the employer during the period of the employee’s employment and for six years following the last payment of wages by direct deposit.” Employers must provide employees with a copy of the written consent, and employees may select the financial institution to which such direct deposit is made. Employees have the right to revoke the consent. As in the Labor Law, the rules do not apply to individuals employed in a bona fide executive, administrative, or professional capacity whose earnings exceed \$900 per week.

### **Payroll Debit Card**

A number of states now permit employers to pay wages via a debit card, as an alternative to paying by check or cash. The rules around debit cards as a payroll tool are continuing to evolve nationally.

New York’s new rules regarding employers’ use of payroll debit cards are among the country’s most comprehensive. Employers that wish to implement a payroll debit card program must take steps to limit the barriers, including financial and geographical barriers, to employees accessing their

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full wages free and clear. Among other requirements, the rules:

- require employers to provide employees with a written notice of rights (discussed below) and to obtain written consent from employees at least seven business days prior to initiating any payment of wages by payroll debit card;
- bar employers or payroll debit card providers from charging employees fees for using payroll debit cards or for accessing related services, such as those for telephone or online customer service, startup, maintenance, overdraft, inactivity, balance inquiries, and account closing;
- require that employers ensure that employees have local access to at least one no-fee automated teller machine located within “a reasonable travel distance” (an undefined term that is left for employers and the NYSDOL to interpret) from where they live or work;
- mandate that at least one method is available for employees to withdraw up to the total amount of wages for each pay period or any remaining balance on the payroll debit card without incurring a fee;
- require that funds on a payroll debit card may not expire, although an account may be closed for inactivity with reasonable notice to the employee and return of any remaining funds with seven days;
- prohibit the use of a payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay; and
- prevent employers from passing on costs associated with a payroll debit card account to employees or receiving kickbacks or financial remuneration from the issuer, card sponsor, or any third party that delivers wages via payroll cards.

## **Written Notice and Consent**

The regulations require that employers that use methods of payments other than cash or check provide employees with written notice that includes:

- a plain language description of all options for receiving wages;
- a statement that the employer may not require employees to accept wages by either payroll debit card or direct deposit;
- a statement that employees may not be charged any services fees to access their wages in full; and
- if offering employees the option to receive payment via payroll debit card, a list of locations, within reasonable proximity to employees’ place of residence or place of work, where employees may access and withdraw wages at no charge.

Written notice and consent may be provided and obtained electronically, so long as an employee is notified of the opportunity to print a copy of the notice and consent for free in the workplace.

Employees must be allowed to withdraw their consent at any time, though employers are given a reasonable time (no longer than two full pay periods) to finalize any changes to the payment method.

Employees' informed written consent to receive wages by direct deposit or payroll debit card may not be obtained with intimidation, coercion, or fear of adverse action for refusing to accept payment of wages by such methods. In addition, payment of wages by either direct deposit or payroll debit card may not be a condition of hire or of continued employment.

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