

## New York State DOL Issues Regulations on Payroll Debit Cards

On September 7, 2016, the New York State Department of Labor adopted [regulations](#) governing the payment of employee wages by any method other than cash or check, including direct deposit and payroll debit cards. The purpose of the new rules, which will become effective on March 7, 2017, is to ensure that workers who are paid via payroll debit cards have access to their wages in full without being subjected to hidden fees.

At least seven business days before taking action to pay employees via payroll debit cards, employers must satisfy certain notice requirements and obtain employees' informed consent. For example, employers must provide employees with:

- a plain language description of all of the employee's options for receiving wages;
- a statement that the employer may not require the employee to accept wages by payroll debit card or direct deposit;
- a statement that the employee may not be charged for any fees for services that are necessary for the employee to access his/her wages in full; and
- if offering the option of payroll debit cards, a list of locations of fee-less ATMs within a reasonable travel distance from the employee's workplace or residence (a link to a website containing such information is sufficient).

Additionally, if employees are covered by a collective bargaining agreement which provides the method(s) of payment by which employees must be compensated, the employer must obtain the union's approval before paying employees by payroll debit card.

Under the new rules, employers will not be able to pass the costs associated with payroll debit cards onto employees, nor will they be able to accept kickbacks from card issuers, card sponsors, or third parties for delivering wages via payroll debit cards. Significantly, employees who choose to receive their wages via a payroll debit card will:

- have access to at least one (1) fee-less ATM within a reasonable travel distance from where the employees work or live;
- have access to unlimited withdrawals from a fee-less ATM; and
- not incur fees for: checking their balance; maintenance; account inactivity; overdraft; contacting customer service; receiving written statements or transaction histories; closing an account; card replacement (at reasonable intervals); taking action necessary to receive wages or hold the payroll debit card; or point of sale transactions.

Unsurprisingly, business spokespersons predict that New York employers will shy away from using payroll debit cards once these new requirements become effective. One advocate described the new rules as "unworkable."

It is worth noting that the new rules will not apply to employees working in a bona fide executive, administrative, or professional capacity who earn in excess of \$900 per week, nor will they apply to employees working on a farm not connected with a factory.

If you have any questions about this Information Memo, please contact [Emily E. Harper](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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