



## **New York Department of Labor releases final payroll card regulations**

The New York Department of Labor [released](#) final regulations that will govern the payment of wages by payroll debit card. The regulations are effective March 7, 2017.

Marking the event, Governor Andrew Cuomo issued a news release explaining that the tough new standards “protect some of our most vulnerable New Yorkers from predatory practices that seek to deny them a fair day's pay for a fair day's work,” “By eliminating costly hidden fees and removing barriers to accessing money workers have rightly earned, these nation-leading regulations build upon this administration's efforts to prevent worker exploitation and help ensure all employees are treated with fairness, decency and respect.” ( Governor Cuomo's office, September 8, 2016 [news release.](#))

The new regulations stipulate the following:

- Employees must have access to at least one cost free ATM near where they live or work. Employers who use payroll cards that provide access to wages are responsible for guaranteeing access.
- The payroll debit card must allow unlimited free withdrawals from an ATM.
- Employers are prohibited from passing on costs associated with a payroll debit card account to an employee and from receiving a kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.
- No fees can be charged for services such as those for customer service, startup or maintenance, overdraft, inactivity, balance inquiries and account closing.

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## History

As we reported in EY Payroll NewsFlash Vol. 16, #142 (6-2-2015), the governor first released draft regulations in late May 2015 to impose strict guidelines for employer use of payroll debit cards. Release of these draft regulations was in response to increased media claims since mid-2013 that some companies force their low-income employees to use payroll debit cards that carry substantial fees while they unscrupulously profit by kickbacks from pay card issuers. New York's Attorney General vowed at that time to investigate the pay card practices of some of the state's largest employers.

In 2013, the Consumer Financial Protection Bureau issued a bulletin reminding employers that under the Electronic Funds Transfer Act (EFTA) and Regulation E they cannot require their employees to receive wages on a payroll card. The bulletin sets forth the federal consumer protections that apply to payroll cards, such as fee disclosure, access to account history, limited liability for unauthorized use, and error resolution rights.

### **Employer restrictions on use of pay cards**

Employers are allowed to pay wages to employees by cash, check, direct deposit or payroll debit cards. Employees must give their advance, written and voluntary consent for electronic wage payments via direct deposit or payroll debit card and be able to withdraw their consent at any time. The employer has a reasonable period (no longer than two full pay periods) to implement withdrawals of consent. Employees can be under no threat of adverse action for their refusal to be paid electronically nor can employers make their participation a condition of hire or continued employment.

### **Businesses must document employees' consent and keep it on record for six years.**

At least seven business days prior to beginning to issue wages by payroll debit card, employers must provide a written statement in the employee's primary language that contains all of the following:

- ▶ A plain-language description of all of the employee's options for receiving wages.
- ▶ A statement that the employer may not require employees to accept wages by payroll debit card or direct deposit.
- ▶ A statement that employees may not be charged any fees for services to access their wages in full.
- ▶ A list of locations where employees can access and withdraw wages at no charge within reasonable proximity to their place of residence or place of work.

## Requirements for operating a pay card program

Employer and their agents must not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or its agent, or the officer or agent of any corporation, may discharge, penalize or in any other manner discriminate against an employee because the employee has not consented to receive his or her wages through direct deposit or payroll debit card.

Employers must provide one or more automated teller machines that offer withdrawals at no cost to the employee. No cost means that employees can access their wages, in full, without encumbrances, costs, charges, or fees.

Employers also must provide at least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee. Employees must be provided with access to their wages at a facility or machine which is located within a reasonable travel distance to the employee's work location or home.

The regulations also provide a list of items for which an employers or agent may not directly or indirectly charge an employee a fee. The employer may not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card. The employer or its agent cannot provide payment of wages by 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.

Funds deposited onto a payroll debit card may not expire; however, the agreement between the employer and the issuer may provide that an account be closed for inactivity provided the card issuer is required to give reasonable notice to the employee and the remaining funds are refunded to the employee within seven days of the account closure.

Employees must be given a written notice of any change to the terms or conditions of the payroll debit card account, including any changes in the itemized list of fees, at least thirty days prior to the change.

At least 30 days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before 30 days after the date the employer has provided the employee with written notice of the change, the employer must reimburse the employee for the amount of that fee.

If employees are covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, the employer must also have the union's approval before paying by payroll debit card.

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