

PUBLICATION

Depositing Employee Wages on Payroll Card Accounts May Be Convenient, but Consumer Protection Agency Condemns Mandatory Wage Payment through Such Accounts

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New Rule for Payroll Card Accounts

The Electronic Fund Transfer Act and Regulation E (which implements the Act) apply to payroll card accounts. In a memo issued on September 12, 2013, the Consumer Financial Protection Bureau (CFPB) clarified that employers cannot require employees to receive their wages by electronic transfer to a payroll card account at a particular institution. Just as employers cannot mandate that an employee receive direct deposit wages at a particular institution, employers cannot mandate that wages be received on payroll cards (although the cards may be offered to employees as a choice).

The memo follows negative press reports and Congressional concerns about high and/or undisclosed fees associated with payroll cards. Many banks have promoted the cards as a helpful option for employees who do not have checking accounts. The cards allow employees to pay bills online and utilize the cards like regular debit cards. The cards may also help the employees avoid the fees charged by check cashing businesses.

The CFPB noticed, however, that payroll cards may have their own fees. While purchases do not generally incur a fee, the employee may be charged a fee for ATM withdrawals, monthly maintenance, balance inquiries, and lost cards. The CFPB may also be concerned that employers sometimes receive commissions from banks for each employee who signs up for a card. From the labor and employment standpoint, employers could violate Fair Labor Standards Act minimum wage laws by requiring payroll card deposits. If the card's monthly fees cause an employee's pay to fall below minimum wage, the employer may be faced with FLSA liability.

Pennsylvania plaintiffs recently filed a class action lawsuit against the franchisee of several McDonalds restaurants, challenging the restaurants' requirement to receive wages on payroll card accounts. The McDonalds defendants defended their position by saying that the cards were like cash or a paper check. Now that the CFPB has been explicit on the topic, businesses cannot defend the practice with this rationale.

Employers may continue to offer the cards as an option, but they must also offer employees the option to receive wages in more traditional ways: direct deposit to an institution of the employee's choosing, paper check, or cash. And, even when the cards are offered only as an option, employers must be careful to comply with state laws. Some states require that employees be paid their wages in full each pay period, and some states mandate free withdrawals or certain disclosures about the fees associated with these cards. Finally, if an employer chooses to offer the cards as an option, the employer and the banking institution must also be careful to comply with other consumer protection laws, such as disclosures, access to account history, and error resolution rights.

CFPB Enforcement Authority

Title X of the Dodd-Frank Act, the Consumer Financial Protection Act of 2010, established the CFPB. The Bureau has rulemaking, enforcement, and supervisory powers over many consumer financial products and

services, as well as the entities that sell them. The CFP Act authorizes the Bureau to “prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” The CFPB has authority to prescribe regulations pursuant to a large group of federal consumer protection laws, including the Electronic Funds Transfer Act.

The CFPB has authority to file actions in federal court for violations of the laws within its purview. When a person or company violates a federal consumer financial protection law, the Bureau can bring an enforcement proceeding against them. If that person or company is found to have violated the law is subject to civil penalties that are assessed through an administrative process within the CFPB.