

**Consumers Union and National Consumer Law Center  
on behalf of its low-income clients**

**PAYROLL CARD LEGISLATION FOR STATES**

**INTRODUCTION**

Millions of employees are paid by payroll card, as the number of payroll cards have grown with increasing popularity in the past decade. According to the FDIC, payroll cards were used to distribute an estimated \$15.9 billion in earned wages in 2007.<sup>1</sup> Wal-Mart, the largest private employer in the U.S., began the move to a “100% paperless payroll” in late 2009 for its 1.4 million employees by automatically loading wages onto a payroll card for employees who do not have or want direct deposit.<sup>2</sup> One industry group has estimated that there will be over 17.5 million payroll cards in circulation in 2010.<sup>3</sup> Another industry group predicts that there will be almost \$60 billion loaded onto payroll cards in 2014.<sup>4</sup>

The most commonly cited benefits for payroll cards are: reduction in costs to employers; reduction in use of paper, making them more environmentally friendly or “greener”; less likelihood of fraud in comparison to paper checks; and more convenience for employees.<sup>5</sup>

However, the employer’s benefit could be the employee’s burden if the cards have high and numerous fees, offer payday-loan type credit features or are simply too complicated or difficult for employees to use. For instance, payroll cards, like other general purpose reloadable cards, can come with a range of fees that may cut into the employee’s net earnings. Payroll cards may charge a wide variety of fees, including: ATM transaction fees, point-of-sale purchase fees, dormancy fees, duplicate or replacement card fees, overdraft fees, live customer service fees, value re-load fees, and fees to get funds by check.<sup>6</sup>

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<sup>1</sup> Fed. Deposit Ins. Corp., *Alternative Financial Services: A Primer* (2009), [http://www.fdic.gov/bank/analytical/quarterly/2009\\_vol3\\_1/AltFinServicesprimer.html](http://www.fdic.gov/bank/analytical/quarterly/2009_vol3_1/AltFinServicesprimer.html).

<sup>2</sup> Walmart offers pay with the Walmart Money Network Paycards or Money Network Checks, which are issued from the Walmart Money Network Paycard. *With 1.4 Million Employees, Walmart Puts Payroll Cards on the Map*, DIGITAL TRANSACTIONS NEWS, Sep. 3, 2009, available at <http://www.digitaltransactions.net/newsstory.cfm?newsID=2311>. See also *More employees say 'hello' to payroll cards: If Wal-Mart's doing it, chances are pay cards will be a growing trend*, creditcards.com, Sep. 29, 2009, <http://www.creditcards.com/credit-card-news/payroll-cards-pay-cards-walmart-1271.php>.

<sup>3</sup> AM. PAYROLL ASS’N, STATE RECOGNITION OF PAYROLL DEBIT CARDS 1 (2008), available at <http://legacy.americanpayroll.org/pdfs/paycard/APAPaycardGuide.pdf>.

<sup>4</sup> See Press Release, Aite Group, *Prepaid Debit and Payroll Cards: Winning in the Void.*, Sept. 15, 2010, available at <http://www.aitegroup.com/Reports/ReportDetail.aspx?recordItemID=704>.

<sup>5</sup> *Id.* at 4-5; Beth S. DeSimone & Carrie A. O'Brien, *Payroll Cards: Would You Like Your Pay with Those Fries?*, 9 N.C. BANKING INST. 35, 35 (2005).

<sup>6</sup> See, e.g., BancFirst Visa Payroll Card Terms and Conditions (effective Sep. 1, 2009; last checked Mar. 2011), <https://www.visaprepaidprocessing.com/BancFirst/PayRoll/PRC869/CP869-T03->

Employees should be provided written disclosures of terms and conditions, including fee information, associated with payroll cards *before* they are issued cards. Employees should also be provided the opportunity to decide whether or not payroll cards are suitable for them. Employers should be required to obtain an employee's consent *before* issuing wages on payroll cards instead of paper checks or other methods of payment such as direct deposit to a bank account without additional cost. Payroll cards should not offer any lines of credit, overdraft, or payday-lending type features.

## **WHAT CAN BE DONE?**

**States can act to protect workers' wages and help employees make informed choices regarding payroll cards.** In particular, states can:

- Provide employees at least two free withdrawals per week from an in-network ATM provided by the issuer, within a reasonable geographic distance from the employee's place of employment.
- Provide employees at least one method to withdraw the entire pay for each pay period without a fee.
- Prohibit the following fees:
  - Initiation, loading, participation, point of service or other fees to receive wages and use the card for ordinary purposes;
  - Overdraft, shortage, low balance or declined transaction fees;
  - Inactivity or dormancy fees;
  - Fees to access balance or other account information online, at ATMs, by Interactive Voice Response (IVR), or through any other automated system;
  - Fees for the first three telephone calls to a live customer service representative per pay period
  - Fees to close an account and receive a refund of the remaining balance.
- Require employers to inform employees about the terms and conditions of the payroll card program, with clear and conspicuous disclosures providing information on all methods to withdraw funds without cost. Employees should be given a printable wallet-sized card listing all fees. The card should also include the customer service phone number and web address to access account information.
- Require written, voluntary employee consent before employers can issue wages on payroll cards. Consent to a payroll card program must not be a condition of hire or continued employment.
- Ensure that employees have the option to check account balances via an automated telephonic system and at least one additional electronic option. These should be offered without any cost to the employee.

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[002/docs/terms.htm](https://www.visaprepaidprocessing.com/IBC/VisaPayRollCard/PRC608/CP608-T03-004/docs/terms.htm); IBC Bank, Visa Payroll Card Terms and Conditions (last modified 2010; last checked Mar. 2011), <https://www.visaprepaidprocessing.com/IBC/VisaPayRollCard/PRC608/CP608-T03-004/docs/terms.htm>; United Community Bank Business Payroll Card Terms and Conditions (last modified 2009; last checked Mar. 2011), [https://www.ucbbank.com/biz\\_services\\_cardfaq.cfm](https://www.ucbbank.com/biz_services_cardfaq.cfm).

- Provide employees with two free ad hoc requests for written statements in a 12 month period, and provide a periodic statement, not less frequently than monthly, upon an employee's one-time written request.
- Prohibit linking payroll cards to lines of credit, including cash advances and payday loans.
- Require written disclosures in all the languages that the employer normally uses to communicate with the employee.
- Require employers to offer direct deposit to a bank account of the employee's choosing as the first option before offering the employee a payroll card. Employees must have the right to receive a paper check if they so request.
- Require employers to select a payroll card program that holds funds in an FDIC- or NCUA-insured account, set up so that each cardholder receives individual deposit insurance on a pass-through basis.

Consumers Union's [model law](#) focuses on ensuring that employees are fully informed before they agree to receive wages on a payroll card, and protecting wages from hidden fees. We are ready to work with states who wish to tackle payroll card issues.

## WHAT HAS ALREADY BEEN DONE?

In 2007, the Federal Reserve Board amended Regulation E to extend most of its protections to payroll cards, such as the right to dispute billing errors and unauthorized transactions.<sup>7</sup> The Fed also amended Regulation E to require that financial institutions obtain a customer's consent to "opt in" to overdraft services before charging overdraft fees – a protection that applies to payroll card accounts as well as regular bank accounts.<sup>8</sup> However, states can do more to address several key issues that affect their residents receiving wages by payroll card, such as usage fees, employee consent requirements, and written disclosures of terms and conditions.

Many states have stepped in by enacting payroll card legislation and regulations. Of the 22 states currently regulating payroll cards,<sup>9</sup> 19 states require issuers to provide

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<sup>7</sup> 12 C.F.R. § 205.18 (2010). Financial institutions are not required to send periodic statements to payroll card account holders so long as they are provided access to balance information by telephone, web-based electronic transaction history of the past 60-days and a written history of transactions upon request.

<sup>8</sup> 12 C.F.R. § 205.17 (2010).

<sup>9</sup> Colorado (COLO. REV. STAT. § 8-4-102(2.5) (2009)), Delaware (19-1000-1324 DEL. CODE REGS. (Weil 2010)), Florida (FLA. STAT. § 532.01 (LexisNexis 2010)), Hawaii (Haw. Dep't of Lab. & Indus. Rel., Wage Standards Div., Alternative Methods of Wage Payments & Issuance of Pay Statements (2010), [http://hawaii.gov/labor/wsd/pdf/DirDep\\_Debit\\_ElecStmnt%2003-2010.pdf](http://hawaii.gov/labor/wsd/pdf/DirDep_Debit_ElecStmnt%2003-2010.pdf)), Iowa (Iowa Workforce Dev., Div. of Lab., Iowa Wage & Hour Questions and Answers (2010), <http://www.iowaworkforce.org/labor/wagefaqs.pdf>), Kansas (KAN. STAT. ANN. § 44-314 (2009)), Maine (ME. REV. STAT. ANN. tit. 26, §§ 663(5), 665(1) (2009)), Maryland (MD. CODE ANN., LAB. & EMPL. § 3-502(e) (2010)), Michigan (MICH. COMP. LAWS § 408.476 (2010)), Minnesota (MINN. STAT. § 177.255 (2009)), Montana (Mont. Dep't of Lab & Indus., Electronic Wage Payments in Montana (2009), <http://erd.dli.mt.gov/component/content/article/5-labor-standards/164-electronic-wage-payments-in-montana-faqs.html>), Nevada (NEV. ADMIN. CODE § 608.135(2) (2010)), New Hampshire (N.H. REV. STAT. ANN. §§ 275:42, 43 (LexisNexis 2010)), New Jersey (N.J. ADMIN. CODE §§ 12:55-1.2, 2.4 (2010)), New

employees at least one free withdrawal transaction within a given pay period. Nine states require employers to provide employees with a written disclosure of all applicable fees associated with a payroll card, and three states<sup>10</sup> also explicitly prohibit charging employees fees to receive their wages by payroll card. Furthermore, eleven states have taken steps to protect employees from the outset by requiring employers to obtain oral or written consent from employees before issuing their wages onto payroll cards. Three states go even further by prohibiting employers from issuing wages with a payroll card until after the employee has voluntarily consented in writing, and state that consent cannot be a condition of hire or continued employment.<sup>11</sup>

The following states have passed these meaningful protections:

Require at least one free withdrawal per pay period:

- Colorado
- Delaware
- Florida
- Hawaii
- Iowa
- Kansas
- Maine
- Michigan
- Minnesota
- Montana
- Nevada
- New Hampshire
- New Jersey
- New York
- North Carolina
- Oklahoma
- Oregon
- Vermont<sup>12</sup>
- Virginia

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York (N.Y. LAB. LAW §§ 191-22 (Consol. 2010), N.Y. Dep't of Labor, Paycards/Debit Cards (2009), <http://www.labor.ny.gov/sites/legal/counsel/pdf/Direct%20Deposit%20of%20Wages/Payroll%20cards%20Letter%2010-29-2009.pdf> (stating that payroll cards are a form of direct deposit, and therefore covered under section 191 and 192 of the Labor Code)), North Carolina (N.C. Dep't of Lab., Wage & Hour Bureau, Debit/Payroll Card Payment (2010), [http://www.nclabor.com/wh/fact%20sheets/debit\\_payroll.htm](http://www.nclabor.com/wh/fact%20sheets/debit_payroll.htm)), North Dakota (N.D. CENT. CODE § 34-14-02 (2010)), Oklahoma (2009 OP. OKLA. ATT'Y GEN. 31 (2009)), available at <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=457867>), Oregon (OR. REV. STAT. § 652.110 (2010)), Vermont (VT. STAT. ANN. tit. 21, § 342 (2010)), Virginia (VA. CODE ANN. § 40.1-29 (2010)), West Virginia (W. VA. CODE ANN § 21-5-3 (LexisNexis 2010)).

<sup>10</sup> KAN. STAT. ANN. § 44-314(f)(2); MINN. STAT. § 177.255(12); VT. STAT. ANN. tit. 21, § 342(2)(L).

<sup>11</sup> MINN. STAT. § 177.255(6); N.J. ADMIN. CODE. § 12:55-2.4(i)(2); VT. STAT. ANN. tit. 21, § 342(2)(C).

<sup>12</sup> In 2009, Vermont went beyond most other states by enacting S. 58, which provides comprehensive protections for employees who use payroll cards. S. 58, 2009 Leg. Reg. See (Vt. 2009) (codified at . STAT. ANN. tit, 21, § 342). The law requires written consent to issue payroll cards, a written disclosure of terms and conditions in a language the employee can understand, and written notice of any changes to the terms and conditions at least 21 days prior to their taking effect. S. 58 provides employees the right to three free withdrawals per pay period, and the right to discontinue receiving wages via payroll card without penalty. It also requires that payroll card agreements prevent withdrawals in excess of the account balance (overdrafts), and prohibits linking payroll cards to credit lines. Vermont's new law will reduce the risk of employees losing portions of their wages by limiting fees and providing better disclosures for payroll cards.

Give employees a choice of other payment options, including both direct deposit and paper check:

- Colorado
- Hawaii
- Maryland
- Minnesota
- Montana
- Nevada
- New Jersey
- Oregon
- Vermont
- West Virginia

Require employee consent before issuing wages on a payroll card:

- Hawaii
- Maryland
- Michigan
- Minnesota
- Montana
- Nevada
- New Jersey
- New York
- Oregon
- Vermont
- West Virginia

Provide written disclosure of terms and conditions:

- Hawaii
- Maryland
- Michigan
- Minnesota
- Montana
- Nevada
- New Jersey
- Vermont
- Virginia

**To read Consumers Union's Model Payroll Card Law, [click here](#).**

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