

July 31, 2015

*By email to regulations@labor.ny.gov*

Michael Paglialonga  
NYS Department of Labor  
Building 12  
State Office Campus, Room 509  
Albany, NY 12240

Re: Methods of Payment of Wages  
Proposed Rule Making 5/27/15 N.Y. St. Reg. LAB-21-15-00009-P

Dear Mr. Paglialonga:

We, the undersigned appreciate the opportunity to comment on the proposed rulemaking.

As businesses seek to go paperless to reduce costs and provide a more convenient form of payroll payment to employees, millions of American workers now receive their wages via payroll card. Some workers may find payroll cards a convenient non-cash option for receiving wages. However, using payroll cards can come with serious downsides. Employees may be forced or steered into using the cards, limiting their choice in how to be paid, and once enrolled in a payroll card program, workers may be charged fees that undercut their wages.

The proposed rules provide protections to ensure employee choice in how they are paid and prohibit the more noxious fees associated with payroll cards. As discussed in more detail below, we support these provisions of the proposed rules and urge the Department of Labor to adopt additional protections for workers:

### **Choice**

- **We strongly support the provisions of the proposed rules which protect consumer choice.**

Although employers cannot force their employees to use a specific account to receive wages under federal law, employees regularly report feeling coerced into using the cards, or not having all the information necessary to make an informed choice about enrollment. The proposed rules address these issues by requiring employers to get an employee's informed consent to open a payroll card account, after giving them pre-opening account disclosures that highlight important aspects of the program and other choices available for receiving wages.

- **We urge the DOL to extend the time that employees have to review the payroll card disclosures and to exercise their choice of pay method before being given a card.**

Employees should have 30 days to decide how they want to be paid, not seven as proposed. Consumers no longer routinely carry around checks that list their routing and account numbers

for direct deposit. They should have a reasonable amount of time to provide that information—or even to open a new account—in order to enable them to receive their funds in the account of their choosing. Of course, consumers can be encouraged to make a choice earlier than 30 days and can be provided a payroll card immediately if that is their choice.

- **The rules should require employers to provide information to employees who are limited English Proficient in the employee’s preferred language.**

If employees are limited English proficient (LEP), all payroll card disclosures and consent forms should be translated with accuracy into the foreign language of preference. Employers might communicate with their staff in a foreign tongue but frequently provide official documents in English only. Staff should receive forms in their preferred language to ensure that they comprehend the options available to them and can make informed decisions.

- **The rules should also require employers to provide information on the right to, and how to, disenroll.**

Information about up-front choices is important. But sometimes that information will be obscured by other important matters. Or, the employee may find that the payroll card is inconvenient. When issuing a payroll, the card issuer or employer should be required to give the employee a reminder of other options and information on how to disenroll and receive funds another way.

- **Once consent is withdrawn, employers should be required to finalize that change within two pay periods.**

The rules as drafted would permit the employer a “reasonable period of time” to finalize such a change. We are concerned that some employers may take advantage of this lack of specificity to delay restoring workers to a different method of payment.

## **Fees**

- **We strongly support the prohibitions on noxious fees.**

We support the provisions of the proposed rules that protect workers from fees imposed for the most pedestrian of activities, such as checking an account balance, getting an account statement or calling customer service to report an issue with the account. To that end, we support the rules’ prohibition on fees for account maintenance, making purchases, overdrawing the account, not using the account, declined transactions, contacting customer service, accessing account information, getting an account statement, replacing one lost or stolen card, or closing an account.

- **We support the proposed rules that provide for fee-free access to ATMs.**

ATM fees can add up for workers, especially if they use the card primarily to access cash. Almost one in five payroll cards is used like a check-cashing substitute, with eighty percent or

more of the value taken off the card via cash withdrawal.<sup>1</sup> If workers cannot withdraw their pay in full without fees, they are essentially getting discounted wages.

The payroll card industry argues that providing free network ATM withdrawals will make the cards economically unfeasible and put them out of business. But many payroll cards and similar cards (like those used for unemployment compensation) offer free network ATM withdrawals, and all workers should have free and convenient access to cash their wages.

The payroll card industry does not like its freedom to charge fees curtailed. But eliminating ATM fees is probably the single most important step to give workers confidence in using the cards and to help payroll cards to spread and be profitable. Free ATM withdrawals can be a win-win for workers and card providers.

- **Workers should be provided *convenient* access to fee-free in-network ATMs.**

To truly have full and free access to wages, workers need *both* a method to withdraw their wages to the penny *and* convenient access to cash when they need it. While the proposed rules provide that participants in a payroll card plan receive a written list of locations “within reasonable proximity” to their home or workplace where they could access and withdraw their wages for free, workers need access to an ATM network that is actually near where they work or live. Workers should not have to travel out of their way to access their wages.

### **Credit**

- **We strongly support the ban on overdraft fees and any kind of linked credit.**

Payroll cards should be a safe way to access wages, not an occasion to charge overdraft fees or push employees into using a line of credit, or other payday-lending type features.

### **Garnishment**

- **Payroll cards should be free from garnishment.**

The rules should be amended to prohibit garnishment of payroll card funds. New York law exempts workers making equal to or less than 40 times the New York State minimum wage each week from garnishment, currently \$262.50 in wages paid weekly. To protect wages needed for necessities and make administration easier for employers and payroll card providers, the rules should clarify that payroll cards are completely exempt from garnishment as long as the worker is paid no more than \$262.50 per week.

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<sup>1</sup> Stephanie M. Wilshusen, et al., *Consumers’ Use of Prepaid Cards: A Transaction-Based Analysis* 22 (Fed. Reserve Bank of Philadelphia Payment Cards Ctr., Discussion Paper, 2012), available at <http://www.philadelphiafed.org/consumer-credit-andpayments/payment-cards-center/publications/discussion-papers/2012/D-2012-August-Prepaid.pdf>.

## **Conclusion**

We applaud the Department of Labor for proposing important protections for payroll card users. In finalizing strong rules, we urge the DOL to augment its proposal with the changes suggested here.

We thank you for this opportunity to comment.

Respectfully,

Consumer Action

Consumers Union

National Consumer Law Center (on behalf of its low income clients)

National Council of La Raza (NCLR)

National People's Action

Public Justice Center