

PUT IT ON MY CARD? NOT SO FAST!

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In the age of technology and convenience, some businesses, particularly those with multi-state operations, are turning away from issuing paychecks to employees or paying them by direct deposit. Instead, some are opting to pay employees using payroll debit cards. Just like the debit card most people already carry in their wallet, many employers are issuing these cards to employees and depositing their wages on the card each pay period. The cards can be used like debit cards: the individual can use it to make purchases or withdraw money from an ATM. Some cards even allow employees to pay bills.

WHAT'S IN YOUR WALLET?

Most of us are already accustomed to using the plastic cards in our wallet, so it sounds like a good idea, right? Not so fast, say some employees and an increasing number of states. Recently, a McDonald's franchise in Pennsylvania, and its owners, were sued by a former employee. The employee asserted that she was forced to receive her pay via a payroll debit card, which included several fees associated with its use.

For example, fees included a \$1.50 minimum charge for an ATM withdrawal, \$5.00 for an over-the-counter cash withdrawal, \$1.00 to check the card's balance, 75 cents per online bill payment, and \$15.00 to replace a lost or stolen card. These mandatory fees allegedly cut into the employee's earnings and potentially dropped her below minimum wage.

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As most employers are well aware, under the Fair Labor Standards Act, covered, non-exempt hourly employees must receive at least minimum wage for all hours worked. Deductions that cut into or drop an employee below minimum wage are generally impermissible. The federal government has not issued rules or regulations concerning employer use of payroll debit cards, but many states have.

While the majority of states do not have actual laws governing payroll debit cards, the departments of labor for most states have weighed in with guidance for paying employees in this manner. The general consensus is that an employee must voluntarily consent to the card, i.e. it cannot be the only option for payment of wages.

The other commonality among states is that employees who use the card must be allowed to withdraw the entire amount of their pay at least one time per pay period without a fee or cost associated with the withdrawal. Some states have even stricter laws requiring written agreements between employees and employers for use of the card. It's important that employers know the requirements for every state where they may offer payroll debit cards.

STATES TAKING A CLOSE LOOK

The future of this method of payment is very much under close scrutiny. In July, the New York Attorney General, Eric Schneiderman, sent letters to 20 companies requesting them to disclose their payroll card practices and raising questions over whether their use of prepaid cards to pay hourly workers complies with New York labor law.

Also in July, more than a dozen Democrats in the United States Senate sent letters to the Consumer Financial Protection Bureau and the U.S. Labor Department asking the federal agency to clarify whether current laws permit this practice by some large employers. The senators expressed concern that some companies may receive commission payments for signing employees up for these cards and that low-income workers are vulnerable and could be taken advantage of by these financial products.

If you are considering switching to payroll debit cards, consult with your employment counsel to ensure the practice complies with applicable state laws and guidance.

And continue to monitor for further legislation that may come from the federal level.

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