The Trend Toward Payroll Cards

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Last month, Georgia became the latest state to pass legislation governing the payment of wages via "payroll cards." Gov. Nathan Deal signed the new law on May 5, 2015. Prior to the passing of this bill, the payment of wages via payroll cards in Georgia was neither explicitly lawful nor unlawful. Any open questions about that issue have now been put to rest by the new legislation.

Many employers across the country have moved away from providing employees with physical checks on pay day, and have moved to a paperless alternative such as direct deposit. While direct deposit remains the most favored option for paperless wage payment, the payroll cards alternative continues to grow in popularity. Payroll cards work similarly to a gift card; the employer simply delivers an employee's wages to a third party who in turn adds the wages to the payroll card which is then provided to the employee.

The new law requires Georgia employers to take certain steps before transitioning to this method of payment. First, employers must provide current employees with a "written explanation of any fees associated with the payroll card." The most typical fees of this kind are "usage" or "withdrawal" fees, or fees to replace a lost payroll card.

Second, employers must simultaneously provide employees with a form that allows employees to opt out of the payroll card payment and request either a paper check or direct deposit. Both of these documents must be provided to current employees at least 30 days before an employer implements a payroll card system. For new employees, the documents must be provided at the time of hire.

Apart from requiring that employees be given notice of the fees associated with the payroll card, Georgia's law has no additional requirements as it relates to fees. This distinguishes Georgia from the laws of certain other states that permit the use of payroll card but that also limit the amount or frequency of fees that may result to the employee during the use of such cards. For example, Nebraska's wage payment law contains a provision regarding wage payment by payroll cards which notes that employers must allow "at least one means of fund access withdrawal per pay period…at no cost to the employee."

Even though Georgia's law does not address the impact of fees in this regard, Georgia employers must still be mindful of other laws governing employee pay. For example, the fees associated with the use of payroll cards might implicate the federal Fair Labor Standards Act, which governs the payment of minimum wage and overtime premium. Moreover, in 2014, the Federal Consumer Financial Protection Bureau issued a bulletin addressing whether an employer could require an employee to establish an account at a particular financial institution in the context of paying via payroll cards.

Employers nationwide should always check their state laws, and evaluate these and other considerations before implementing a payroll card system.

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