Pay Cards: Play by the Rules or Risk Paying Twice

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As our world becomes more electronic and individuals become more accustomed to paying for goods and services with the swipe of a plastic card, employers and sometimes even employees are attracted to pay cards. A pay card is nothing more than a stored value card provided by a financial institution that works like a traditional debit or ATM card or the increasingly popular gift card.

In the employment arena, an employer contracts with a service provider to have the wages due to employees transferred onto a pay card each pay period. Then, the employee uses the pay card to access his or her wages by either withdrawing funds or using the pay cards in the same manner as a debit card. For employers and employees comfortable with such electronic transactions, a pay card may be ideal. However, both employers and employees should keep certain things in mind.

For employers, particularly multi-state employers, the primary consideration is the slowly developing patchwork of state laws regulating the use of pay cards. The developing state laws contain provisions designed primarily to protect employees from an employer mandate for pay cards as well as to protect the employees from fees and costs associated with accessing funds on the pay card. Likewise, while the majority of states do not have laws specific to pay cards, many State departments of labor have provided guidance along the same lines: use of a pay card must be voluntary and fees and costs for use must be limited. Many states require that an employee be allowed to withdraw the entire amount of wages from the card at least once per pay period without any fee or cost associated with the wage withdrawal. A few states have even stricter laws such as requiring a written agreement between the employer and the employee before pay cards can be used.

Even in states which do not directly regulate an employer's use of pay cards, employers still must be careful of the implications of traditional laws protecting an employee's pay. For example, the Fair Labor Standards Act does not allow an employer to make deductions from an employee's pay which reduce the employee's pay below minimum wage. Thus, employers must be wary of pay card fees and costs which could cause an employee's pay to fall below minimum wage. For an employee that makes minimum wage or close to it, any fees for the use of a pay card would present a problem. While this concern may occur only for employers with low paid workers, it serves as an excellent reminder that long standing employment laws continue to impact changing technology and innovations in ways which were not originally intended when the law was passed.

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Because pay cards are a financial product, employers also must be alert for regulation from areas not traditionally associated with employment matters. For example, the Federal Consumer Financial Protection Bureau (CFPB) recently issued a bulletin indicating that an employer may offer a payroll card only if the employee is allowed to choose the financial institution at which the wages will be deposited or if the employee has the option to receive pay in a different manner.

Employers also should consider reminding employees about the need to use the pay card securely. For example, while a pay card can be replaced, an employee should take care that the card is not lost or stolen. Likewise, while the pay card will be protected with an individual pin, an unauthorized user may be a concern. While employers have no direct obligation to remind employees about financial responsibility, such helpful hints could be a good idea for some sectors of the workforce.

Finally, for any pay card program, an employer will need to continue to monitor potential developments at both a federal and state law level. While, in the future, pay cards may be the primary wage delivery mechanism, for now, they present an area where more regulation is likely as their use becomes more prevalent.

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