



To Pay, Or Not To Pay, By Payroll Debit Card

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

Most of us already are accustomed to using the plastic cards in our wallet, so it sounds like a good idea, right? Not so fast, say some employees, the federal Consumer Financial Protection Bureau and an increasing number of states.

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, and deductions that cut into or drop an employee below minimum wage are generally impermissible. Until very recently, however, the federal government had not weighed in concerning employer use of payroll debit cards, but many states had.

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 amongst the 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 do have stricter laws requiring written agreements between employees and employers for use of the card. Therefore, it is important that employers know the requirements for every state where they may offer payroll debit cards. Employers should bear in mind that the CFPB Bulletin states that the EFTA preempts state law, unless the state provides greater employee protections than the federal legislation.

Where does this leave businesses in light of these recent developments? Employers who are currently using or considering payroll debit cards should consult with their employment counsel to ensure the practice complies with applicable state laws and federal guidelines. Certainly, what appears to be the safer approach is to offer payroll debit cards as an option, but not the only method of payment, and to eliminate or greatly limit fees to the employee for using the card. Employers

should also continue to monitor for further legislation or regulations that may come from the federal level.

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Related People



Michelle I. Anderson

Partner

504.529.3839

[Email](#)