The Rewards And Risks Of Employee Pay Cards

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As our world becomes more and more electronic and individuals become more accustomed to paying for goods and services with the swipe of a plastic card, both employers and employees are becoming attracted to pay cards.

How Does A Pay Card Work and Why Do Employers Use Them?
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 the funds from the card or using the pay card in the same manner as a debit card. For employers and employees comfortable with such electronic transactions, a pay card may be ideal. For employers, using pay cards can present a significant cost savings over issuing paper checks and significantly reduce the headaches of getting paychecks to employees on payday. However, both employers and employees should keep certain things in mind.

Is there Clear State Law Regulating Pay Cards?
For employers, particularly multi-state employers, the primary consideration is the slowly developing patchwork of state laws regulating the use of pay cards. Many states still have not specifically addressed the use of pay cards, so employers are forced to interpret statutory language created back in a time when employers had only one option – issuing a paper check either in person or by standard mail. The developing state laws contain provisions designed primarily to protect employees.

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 activated.

What About Federal Law Regulating Pay Cards?
Even in states that do not directly regulate an employer's use of pay cards, employers must be careful of the implications of traditional laws protecting an employee's pay. For example, for a non-exempt employee, the Fair Labor Standards Act does not allow an employer to make deductions from an employee's pay that reduces the employee's pay below minimum wage. While this concern may occur only for employers with low-paid workers, it serves as an excellent reminder that long-

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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 that were not originally intended when the law was passed.

Because pay cards are financial products, employers also must be alert for regulation from areas not traditionally associated with employment matters. For example, the Federal Consumer Financial Protection Bureau recently issued a bulletin that indicates 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 and if the employee also is offered the option to receive pay in a different manner. Payroll cards fall under the CFPB's jurisdiction under the Electronic Fund Transfer Act and Regulation E.

Federal law contains provisions specific to payroll cards that provide employees with certain consumer protections such as notice of fees, access to account history and limitations on unauthorized use. Employers must be careful to ensure they use a service provider that meets these requirements. For example, employees are entitled to receive notice regarding any fees that may occur for the electronic transfers of funds to or from the card. These disclosures must be clear, in writing and in a form that employees may keep.

Further, the card issuer must either provide periodic statements for the employee's pay card or generally make available the employee's current account balance and 60-day account history. The account history must include information on any fees imposed for fund transfers. Finally, an employee's liability for unauthorized use of their cards must be limited, provided the unauthorized use is reported within a certain period of time. Finally, if an employee reports a payroll card account error, the financial institution must respond, as long as the report is received within a certain period of time.

What Do Employees Typically Think About Pay Cards?
For many employees leery of a traditional bank account or who desire banking flexibility, pay cards are ideal. However, some employees complain of unexpected fees for activities such as ATM use, teller withdrawals and checking the balance of a card. As with many employment issues, the more education provided by the employer, the better employees will respond to pay cards.

Additionally, employers should consider educating employees about the need to be conscious of pay card security measures. For example, while a pay card can be replaced, an employee should take care to take precautions that minimize the chance that their card could be lost or stolen. Likewise, while the pay card will be protected with an individual PIN, unauthorized usage may be a concern as well. While employers have no direct obligation to remind employees about financial responsibility, such helpful hints could be beneficial for some sectors of the workforce.

Final Considerations
Finally, for any pay card program, an employer will need to continue to monitor potential legal developments at both a federal and state law level. In the future, pay cards may be the primary wage delivery mechanism, but for now, they present a scenario in which more regulations are likely to be established as their use becomes more prevalent.

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