New General Business Law ("GBL") section 1015.11 requires every licensed promoter of authorized combative sports and professional wrestling to provide accident insurance for the protection of licensed professionals and wrestlers appearing in authorized combative sports matches or professional wrestling exhibitions on and after September 1, 2016, and authorizes the State Athletic Commission to promulgate regulations necessary to implement this legislation.

In accordance with GBL section 1015.11, the State Athletic Commission is repealing current 19 NYCRR 208 and promulgating a new Part 208, which, among other things, provides that the accident insurance policy may be either primary or secondary to any other applicable insurance coverage held by the licensed professional or wrestler participant.

Pursuant to Insurance Law section 3201, accident insurance policies are subject to the approval of the Superintendent of Financial Services. These policies are subject to the requirements of 11 NYCRR 52 (Insurance Regulation 62). In order for the accident insurance policy to be secondary to other coverage, an amendment to Insurance Regulation 62 is necessary.

This amendment allows a blanket accident insurance policy that is issued in accordance with GBL section 1015.11 to contain a provision that its benefits are excess or always secondary to any plan.

This amendment should not result in any impact on jobs or employment opportunities, including self-employment opportunities, in New York State because it neither creates new employment or job opportunities nor reduces them.

Department of Labor

NOTICE OF ADOPTION

Methods of Payment of Wages

I.D. No. LAB-21-15-00009-A
Filing No. 814
Filing Date: 2016-08-24
Effective Date: 2017-03-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

Purpose: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

Text of final rule: *Part 192 Methods of Payment of Wages*

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

(a) Cash;

(b) Check;

(c) Direct Deposit; or

(d) Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.

(b) Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time, but no longer than two full pay periods, to finalize such change.

(c) No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.

(d) Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home, and without unreasonable restraint by the employer or its agent.

(e) Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of the dollar threshold contained in Section 192(2) of the Labor Law, or an employee working on a farm not connected with a factory.

(f) Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.

(g) Reasonable Intervals shall mean not less frequently than annually.

(h) Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.

§ 192-1.3 Written Notice and Consent

(a) Notice of methods of payment. An employer who uses methods of payments other than cash or check shall provide employees with a written notice that identifies the following:

(1) a plain language description of all of the employee's options for receiving wages;

(2) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;

(3) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and

(4) if offering employees the option of receiving payment via payroll debit card, a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.

(b) Consent. An employer who offers one or more methods of payment of wages that require consent shall obtain such consent in writing and shall ensure that:

(1) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment of wage by direct deposit or payroll debit card; and

(2) Does not make payment of wage by direct deposit or payroll debit card a condition of hire or of continued employment.

(c) Electronic. The written notice and written consent may be provided and obtained electronically so long as an employee is provided with the ability to view and print both the notice and the consent while the employee is at work and without cost to the employee, and the employee is notified of his or her right to print such materials by the employer through such electronic process.

(d) Language. The written notice and written consent shall be provided in English and in the primary language of the employee when a template notice and consent in such language is available from the commissioner.

§ 192-1.4 Prohibited practices

An employer and its agent shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages through direct deposit or payroll debit card.

Subpart-2 Methods of Payment

§ 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) The check is a negotiable instrument; and

(b) The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.

§ 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) It has consent from the employee;

(b) A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and

(c) Such direct deposit is made to a financial institution selected by the employee.

§ 192-2.3 Payment of Wages by Payroll Debit Card

(a) When paying wages by payroll debit card, an employer shall ensure that:

(1) It has consent from the employee;

(2) It provides the information referenced in Section 192-1.3(a) and receives consent at least seven business days prior to taking action to issue the payment of wages by payroll debit card, during such seven business days the employee's consent shall not take effect.

(b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:

(1) Local Access to one or more automated teller machines that offers withdrawals at no cost to the employee;

(2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;

(c) An employer or agent shall not charge, directly or indirectly, an employee a fee for any of the items listed in this subsection. Inclusion in this subsection does not impose any separate or independent obligation to provide services, nor does it relieve an employer or agent from compliance with this Part or any Federal or State law or regulations:

(1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;
(2) Point of sale transactions;
(3) Overdraft, shortage, or low balance status;
(4) Account inactivity;
(5) Maintenance;
(6) Telephone or online customer service;
(7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;
(8) Providing the employee with written statements, transaction histories or the issuer's policies;
(9) Replacing the payroll debit card at reasonable intervals;
(10) Closing an account or issuing payment of the remaining balance by check or other means; or
(11) Declined transactions at an Automated Teller Machine that does not provide free balance inquiries.
(12) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.
(d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.
(e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.
(f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.
(g) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.
(h) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 192-2.3(a).

Revised rule making(s) were previously published in the State Register on October 28, 2015 and June 15, 2016.

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

Revised Regulatory Impact Statement, Revised Regulatory Flexibility Analysis, Revised Rural Area Flexibility Analysis and Revised Job Impact Statement

The revisions do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department received numerous comments following publication of the revised rule in the June 15, 2016 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule. Generally, comments were received arguing against the adoption of the present rule, and comments were received commending the Department for this proposal and urging its adoption. Comments which were previously analyzed, for which no changes were made in the revised rule in the previously published Assessment of Comments, are not included here and reference is made to the previously published assessment for such analysis and response.

Comment 1:

The Department of Labor should take steps to inform workers of their rights under Federal Regulation E of the Electronic Fund Transfer Act.

Response 1:

The Department will consider adding guidance and statements which reference the protections of Regulation E in future guidance and material, including the notice templates contemplated by this rule.

Comment 2:

In addition to the languages previously identified, the Department should make templates available in French, Arabic, Bengali, Tagalog, and Urdu in order to ensure workers are informed of their rights.

Response 2:

The Department agrees and intends to make the templates available in such additional languages.

Comment 3:

Prior consents and authorizations for the payment of wages via direct deposit and/or payroll debit card should remain valid.

Response 3:

The Department, in analyzing the significant comments received advocating for the continued effectiveness for consents prior to the effective date of this rule, agrees and consents given without the requisite notices will remain valid so long as such notices are provided to employees before the effective date of this rule and employees are expressly notified of their right to withdraw consent to direct deposit or payroll debit card through such notices. Such interpretation is consistent with the goal of ensuring that employees are notified of their rights while seeking to minimize adverse impact on and paperwork requirement for employers. This Comment and Response supersedes Response Number 10 in the June 15, 2016 Assessment of Comment.

Comment 4:

Local access to an ATM should not be required in favor of requiring access to a network of ATMs with a substantial presence in the State.

Response 4:

The Department disagrees. An ATM network with a substantial presence in the State will not guarantee local access to ATMs since such a requirement does not address the diverse population areas throughout the State. For example, a substantial network that has a significant presence Downstate would provide little to no access to ATMs for employees in the North Country. Conversely and more appropriately toward the goal of ensuring employee local ATM access to wages, the requirements of the present rule merely require that one or more ATMs be located within a reasonable distance to the employees work or home. Such requirement may be sufficiently met by a network of ATMs, but compliance will be determined not with the statewide sufficiency of the network, but rather by the local access provided relative to the employee's place of work or home.

Comment 5:

The notice and consent requirements of the rule are vague, and they fail to provide employers with sufficient information as to what notice is required to be provided.

Response 5:

The notice and consent requirements provide employers with a sufficient basis of what is required, and the Department will prepare templates that contain all of the information necessary for compliance with the requirements of the rule. Employers are free to utilize such templates, model their notices after such templates, or develop their own templates using the requirements outlined in the rule.

Comment 6:

There is a technical issue in 192-2.3(a)(2) which provides that the "following information" must be provided before consent must take effect, but the information referenced was moved to Section 192-1.3(a).

Response 6:

The Department agrees. A non-substantial change was made to reflect this technical issue.

Comment 7:

Employers should not have to provide employees with an individualized list of ATM locations, as a phone number or website which contains such a list should be sufficient.

Response 7:

A link to a website which provides a list or mechanism by which an employee can access a list of ATM locations which provide local access is sufficient to satisfy the notice requirements in Section 192-1.3(a)(4).

Comment 8:

The rule should be revised to exclude the exemption in applicability for employees working on a farm not connected with a factory.

Response 8:

The statutory authority, from which the present rule is derived, at least

in significant part, comes from provisions within Article 6 of the Labor Law which exclude, in their coverage, employee working on a farm not connected with a factory. As such, the provisions of the present rule properly exclude such employees given the limited authority that the Department has relative to such workers in this context.

Comment 9:

The Department should not finalize this rule until the Consumer Fraud Protection Bureau acts with regard to amendments to Regulation E.

Response 9:

The Department disagrees. Any amendments to Regulation E, which applies generally to financial institutions and governs their interactions with consumers, will be reviewed by the Department as to the effect that they have on the present rule, if any, and appropriate regulatory or administrative action will be taken at that time.

Department of Motor Vehicles

NOTICE OF ADOPTION

Certified Examiners

I.D. No. MTV-27-16-00001-A

Filing No. 810

Filing Date: 2016-08-23

Effective Date: 2016-09-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 6.13 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 509-g and 509-m(2)

Subject: Certified examiners.

Purpose: To clarify and strengthen guidelines regarding certified examiners.

Text or summary was published in the July 6, 2016 issue of the Register, I.D. No. MTV-27-16-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: Assemblyman Kenneth P. Zebrowski, Chairman of the Administrative Regulations Review Commission, submitted a comment about the proposed amendments to 15 NYCRR 6. The Assemblyman does not object to adoption of the consensus rule as proposed, but recommends an amendment for a future rulemaking.

Assemblyman Zebrowski writes that although the proposed rule adds new compliance requirements for motor carriers, corresponding changes are not made to section 6.22. He explains that unless section 6.22 is amended, the proposed amendments to section 6.13 would appear to be the only carrier compliance requirements involving false statements or misrepresentations that could not be enforced through civil penalties.

Response: The Department appreciates the Assemblyman's comments and will carefully consider whether a conforming amendment to section 6.22 is appropriate for a future rulemaking.

NOTICE OF ADOPTION

Driving Schools

I.D. No. MTV-27-16-00008-A

Filing No. 809

Filing Date: 2016-08-23

Effective Date: 2016-09-07

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Part 76 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215 and 394

Subject: Driving schools.

Purpose: Makes technical and clarifying amendments to improve consumer protection and increases Department efficiency.

Text or summary was published in the July 6, 2016 issue of the Register, I.D. No. MTV-27-16-00008-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 522 A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Tax Refunds Received by New York American Water Company, Inc.

I.D. No. PSC-36-16-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering the petition of New York American Water Company, Inc. that proposes the disposition of a tax refund.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of tax refunds received by New York American Water Company, Inc.

Purpose: To determine the disposition of tax refunds and other related matters.

Public hearing(s) will be held at: 10:30 a.m., Oct. 25, 2016 and continuing daily as needed*, at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 16-W-0384.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Public Service Commission is considering a petition by New York American Water Company, Inc. (NYAW) to implement its proposed disposition of a tax refund received from the Town of Oyster Bay, the Syosset Sanitation District and the Glenwood Garbage District. NYAW received a tax refund in the amount of $984,058.71. NYAW proposes that certain costs related to these tax challenges be deducted and that its shareholders retain a percentage of the net amount as reward for its efforts in obtaining the refund. The remainder of the refund is proposed to be returned to ratepayers in a manner to be determined. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(16-W-0384SP1)