

New York State DOL Issues Draft Regulations on Payroll Debit Cards

The New York State Department of Labor (NYSDOL) recently proposed new [regulations](#) governing the payment of employee wages via payroll debit cards – a growing practice among employers. These draft regulations, which are not yet final or effective, also set forth new requirements governing the payment of wages by direct deposit.

Regarding an employer's use of these so-called "payroll cards," NYSDOL has previously cautioned that paying employees in this manner raises a number of potential legal issues under the New York Labor Law. Even so, NYSDOL concurrently opined that employees may be paid lawfully through such payroll cards, so long as certain requirements are met. For example, according to NYSDOL, employers are required to first obtain written authorization from employees, and employees cannot be subjected to undue fees or encumbrances when accessing their wages through the payroll cards.

The proposed regulations track this prior guidance and, if enacted, will codify the specific requirements that must be met in order for employers to lawfully use such payroll cards. Among other things, employers will be required: (1) to provide specific, advanced disclosures to employees about the payroll card program in question; (2) to obtain the prior "informed consent" of employees; and (3) to ensure the payroll card program includes a long list of other mandatory terms and conditions (e.g., employees must be provided with access to at least one ATM network offering withdrawals at no cost).

With respect to direct deposit, the proposed regulations would require employers to maintain an employee's written consent to be paid through direct deposit during the entire duration of the employee's employment and for six years after the last deposit is made. In addition, employers would be required to provide a copy of the written consent to the employee and to make the direct deposits at a financial institution selected by the employee.

Notably, the proposed regulations would not apply to individuals working in executive, professional, or administrative positions who earn in excess of \$900.00 per week.

The proposed regulations are currently open for public comment. We will continue to monitor this issue and report on any further developments.

To learn more, contact [Andrew D. Bobrek](#) at (315) 218-8262 or abobrek@bsk.com.

Editor's Note: Our thanks to Stephanie Hoppe, one of Bond's Summer Law Clerks, who helped prepare this article.



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