



News & Updates

FUTURE OF DIRECT DEPOSIT AND PAYROLL DEBIT CARD REGULATIONS IN QUESTION

New York State employers waiting for definitive regulations clarifying and specifying acceptable ways to pay employees will remain in the dark for a little while longer — the New York State Department of Labor (DOL) has filed an appeal in hopes of resurrecting regulations regarding debit card and direct deposit payments to employees. These regulations would have gone into effect this past March, but were blocked by the New York State Industrial Board of Appeals (IBA) in February.

Last fall we notified you of regulations from NYSDOL pertaining to acceptable methods by which employers could pay wages to different types of employees. Traditionally, employers paid employees by cash or check, but for many years now both large and small employers have made payments by direct deposit or payroll debit cards. There were, however, no clear rules delimiting the ways employers could make payments with these newer methods.

Under these new regulations, codified at section 192 of the New York Labor Law, New York State employers would have to provide written notice and obtain written consent to pay an employee through direct deposit, and retain a copy of the written consent for six years following the last payment. Similar rules would have applied to employers wishing to pay employees via payroll debit cards, with additional restrictions requiring an employee's access to no-fee ATMs, the employee's ability to withdraw all funds without any fees, and agreements with the card issuer preventing the funds from expiring.

These regulations were to take effect March 7, 2017, but on February 16, IBA revoked the regulations, ruling that the DOL's rulemaking authority infringed on the jurisdiction of banking and financial services regulators. On April 24 the DOL appealed that revocation, calling the IBA's decision "arbitrary and capricious."

Currently, the DOL's proposed regulations are not in effect; employers are not obliged to be in compliance. There is a chance that a New York State Supreme Court judge will overturn the IBA's revocation and allow the DOL's regulations to move forward, though the losing party could appeal the ruling in the state's appellate division; the case could eventually reach the New York State Court of Appeals.

If the DOL regulations do go into effect, New York State employers would have an ample window in which to ensure their payroll practices meet the new regulations. While the appeal is pending, employers should rely on prior DOL opinion letters and general wage payment statutes for guidance, since those resources are currently controlling law.

While federal law prohibits employers from requiring employees to use a specific financial institution for direct deposit, most regulation varies state to state. Some states (Alabama, Georgia, Hawaii, Massachusetts, Mississippi, Louisiana, Nebraska and Ohio) have no particular laws regarding direct deposits, while others regulate employers in a variety of different ways. Employers operating across state lines need to stay abreast of the varying regulations and development in this area.

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