

Management Alert

DLSE Approves Money Network Checks and Payroll Debit Cards as Means of Wage Disbursement

On July 7, 2008, California's Division of Labor Standards Enforcement's (DLSE) new Chief Counsel issued two opinion letters advising that the appropriate use of "Money Network Checks" and "payroll debit cards" complies with California law, specifically Labor Code section 212, which governs the means of payment for wages.¹

Applicable Labor Code Provisions

Labor Code section 212 requires employers to compensate employees in a form that is "negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment." Section 212 demonstrates a strong public policy prohibiting employers or their agents from imposing obstacles to employees' receipt of the wages they have earned. It prohibits non-cash methods of distribution unless they comply with the above conditions.

Labor Code section 213(d) authorizes payment of wages by direct deposit into an employee's account at any bank or credit union; however, it does not by its terms exclude other methods of payroll distribution involving direct deposit.

Money Network Checks

Money Network Checks are presented as an option to traditional direct deposit. Employers deposit payroll funds into a pooled account for employees at a federal savings institution and FDIC member. The money is held under an irrevocable trust agreement, with the employees as beneficiaries. Employees receive a supply of Money Network Checks, which are replaceable if lost or stolen, as well as a companion debit card.

To validate their checks on payday, employees call the Money Network Service toll free number, obtain authorization numbers, and write them in the appropriate spaces on the checks. Employees then write in their name as the payee on the check. Employees receive one free check per pay period, and their funds are fully accessible for at least thirty days after each payday. To

¹ DLSE opinion letters are advisory only and do not carry the force or effect of a properly enacted statute or regulation.

cash the Money Network Checks referenced in the opinion letter, employees could choose the ACE Cash Express locations printed on the checks or any of 140 ACE locations or 170 Wal-Marts in California.

The DLSE found that Money Network Checks complied with Labor Code section 212, primarily because employees were able to access all of their funds on the scheduled payday without incurring a fee, and because employers presented them as an alternative pay system, rather than as a mandatory program. The DLSE also found Money Network Checks “negotiable” by the employee obtaining authorization from Money Network’s customer service number, which is no more burdensome than picking up a paycheck in person or providing identification verification. Money Network Checks also are “payable on demand,” because the funds are fully available to employees on payday. After depositing the employee funds into the appropriate account, employers relinquish all claim to the money, yet continue to bear all risks for problems or delays that arise from the procedure. The DLSE found Money Payment checks to be “without discount” because employees receive one free transaction per pay period, at which they may withdraw the entire amount. The DLSE further found Money Network Checks to be payable “at some established place of business in the state” because they could be cashed either at the ACE location specified on the checks or at any of 310 ACE or Wal-Mart locations throughout the state. Finally, Money Network Checks were found to comply with the requirement that the employer’s account contain funds sufficient to cover employees’ withdrawals for at least thirty days after each payday because the employees’ pooled account is an irrevocable trust, and once employees obtain their authorization numbers, the funds are transferred immediately from the pooled account into individualized bank-owned clearing accounts.

Payroll Debit Cards

Payroll debit (or stored value) cards were also approved by the DLSE as another option for employee wage distribution. The cards use either a closed system (accepted at a single merchant or entity) or an open system (accepted by multiple merchants or entities), and they can either be proprietary or branded by Visa or MasterCard and function like debit cards (i.e., usable at either an ATM or any point-of-sale (POS)). The cards at issue in the DLSE’s opinion letter were open system and branded, with debit card features. Employers using cards deposit employee payroll by direct deposit into individual employee accounts at a FDIC-member bank, and give each employee a bank card. On payday, employees have immediate access to their full wages by using the card at an ATM or a POS. They receive one free transaction per pay period.

The DLSE found the payroll debit cards complied with Labor Code section 212. The cards comply with the “cash, on demand” requirement because on payday employees can immediately access any amount of their wages, either in cash or to purchase goods. The cards also provide the cash “without discount” because employees receive at least one free transaction per pay period. The cards may be used “at some established place of business in the state” because, despite the fact that the issuing banks are based in other states, the cards can be used at any VISA-member financial institution or ATM throughout California. The DLSE found that the requirement that the “name and address . . . appear on the instrument” is waived when the “place of business” is a bank—in this case, the ATM or POS serves as proxy for the bank issuing the cards. Also, the paycards fulfill the requirement that the money be held in employees’ accounts for at least 30 days.

The DLSE determined that payroll debit cards were “conceptually similar” to a service it approved in 1994. There, employees could choose to open a Citibank PayTM account and receive a PayTM card. Each payday, employees’ wages were directly deposited into their respective accounts, and employees could access their funds at any of hundreds of ATMs or POSs.

Although the use of payroll debit cards and Money Network Checks has been approved under the appropriate circumstances by the DLSE, employers still must provide employees with accurate wage statements on payday in accordance with Labor Code section 226(a).

What These Letters Mean For Employers

Prior to the issuance of these opinion letters, it was unclear whether employers could offer Money Network Checks or payroll debit cards to pay employees. It is now clear that the DLSE’s interpretation of the Labor Code, as well as its enforcement position, is that payroll debit cards and Money Network Checks are lawful under the appropriate conditions described in the letters. Most importantly, the use of these devices must be voluntary and offered as an alternative method of payment, the funds must be immediately available on payday, and employees must be able to withdraw all funds without a transaction fee.

For more information, please contact the Seyfarth Shaw attorney with whom you work, or any Labor and Employment attorney on our website (www.seyfarth.com/LaborEmployment)

ATLANTA

One Peachtree Pointe
1545 Peachtree Street, N.E., Suite 700
Atlanta, GA 30309-2401
404-885-1500
404-892-7056 fax

BOSTON

World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210-2028
617-946-4800
617-946-4801 fax

CHICAGO

131 South Dearborn Street
Suite 2400
Chicago, IL 60603-5577
312-460-5000
312-460-7000 fax

HOUSTON

700 Louisiana Street
Suite 3700
Houston, TX 77002-2797
713-225-2300
713-225-2340 fax

LOS ANGELES

One Century Plaza
2029 Century Park East, Suite 3300
Los Angeles, CA 90067-3063
310-277-7200
310-201-5219 fax

NEW YORK

620 Eighth Avenue
New York, NY 10018-1405
212-218-5500
212-218-5526 fax

SACRAMENTO

400 Capitol Mall
Suite 2350
Sacramento, CA 95814-4428
916-448-0159
916-558-4839 fax

SAN FRANCISCO

560 Mission Street
Suite 3100
San Francisco, CA 94105-2930
415-397-2823
415-397-8549 fax

WASHINGTON, D.C.

815 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006-4004
202-463-2400
202-828-5393 fax

BRUSSELS

Boulevard du Souverain 280
1160 Brussels, Belgium
(32) (2) 647 60 25
(32) (2) 640 70 71 fax



Breadth. Depth. Results.

www.seyfarth.com

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Copyright© 2008 Seyfarth Shaw LLP. All rights reserved.