

One Minute Memo®



New York DOL Challenges Rescindment of Payroll Debit Card and Direct Deposit Regulations

By Howard M. Wexler and Meredith-Anne Berger

Seyfarth Synopsis: The New York Department of Labor has mounted a challenge to the successful appeal of its promulgated regulations governing payment to employees via payroll debit cards and direct deposit. The regulations were set to go into effect on March 7, 2017, before they were summarily rescinded by the state Industrial Board of Appeals in February.

As anticipated, on April 24, the New York Department of Labor (“NY DOL”) filed [an appeal](#) seeking to reverse the New York Industrial Board of Appeals (the “Board”) decision to rescind the regulations governing payment of wages by payroll debit card and direct deposit. As previously reported [here](#), these regulations, which were set to go into effect on March 7, 2017, were rescinded in February.

The NY DOL must establish that the Board’s decision was “an error of law or was arbitrary and capricious,” which gives significant deference to the Board’s decision.

The [NY DOL’s brief](#) largely focuses on the fact that *employers*, and only if applicable, their *agents*, are regulated by these provisions. The NY DOL also argues that it has longstanding rules governing payroll debit cards in its opinion letters, and that no legislation was even considered until years after these opinions were issued. Thus, it claims its authority to issue such regulations was well-established.

The NY DOL argues that Global Cash Card, the payroll debit card vendor that challenged the regulations, lacked standing to do so. In particular, the NY DOL argues that Global Cash Card is not a “person in interest” under the Labor Law because it is an agent that contracts with employers to issue payroll debit cards. It notes that the regulation’s inclusion of payroll debit card vendors was meant “to prevent employers from evading the provision’s ban on fees for certain services by imposing such fees indirectly, through their agents.” As such, employers cannot fashion a “work-around” in avoiding compliance with the regulations merely by contracting with a third party to manage its payments to employees via payroll debit card.

Also challenged was the Board’s finding that the NY DOL went beyond its statutory authority in regulating payroll debit cards. The NY DOL noted that Article 6 of the New York Labor Law requires that workers be paid in full and within a statutorily prescribed time period, that informed consent is required before an employer may require payment by direct deposit, and prohibits unlawful deductions from wages. Under this authority, the NY DOL sought to regulate the imposition of certain fees, which could place encumbrances on employee access to wages.

We will continue to track this proceeding as it nears a decision. Global Cash Card has until May 29 to file opposition letters and the NY DOL has until June 12 to file a reply. Until the appeal is decided, employers must rely on the NY DOL opinion letters and statutes which pertain to wage payments generally and payroll debit cards to ensure compliance with the law. As Pennsylvania's payroll debit card law goes into effect on May 5, New York employers are waiting for further clarity. For now, the law regarding payroll debit cards remains in flux in New York. Stay tuned!

Finally, employers should also note that the New York City Freelance Isn't Free Act, on which we previously reported [here](#) and [here](#), will go into effect on May 15, 2017.

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