

One Minute Memo®



New York Industrial Board of Appeals Rescinds Payroll Debit Card and Direct Deposit Regulations

By Robert Whitman, Howard Wexler and Meredith-Anne Berger

Seyfarth Synopsis: Regulations that would have restricted New York employers' ability to pay employees via payroll debit cards have been struck down by an administrative review tribunal within the State Department of Labor. Barring further regulatory or statutory action, employers remain free to use payroll debit cards subject to existing rules.

The New York Industrial Board of Appeals has rescinded the payroll debit card and direct deposit regulations that were set to go into effect on March 7, 2017. In a [decision](#) published on February 16, 2017, the Board found that the New York Department of Labor ("NY DOL") lacks the authority to regulate financial institutions with respect to the fees incurred for payroll debit cards.

A payroll debit card vendor, Global Cash Card, Inc., challenged the regulations ([12 NYCRR § 192](#)) on the basis that they exceed the NY DOL's authority. The Industrial Board of Appeals ("IBA") agreed, holding that the regulations exceed the NY DOL's statutory authority under sections 192 and 199 of the New York Labor Law by regulating banking services provided by financial institutions. Such regulation, the IBA held, is the exclusive responsibility of the New York Department of Financial Services, which governs the fees that financial institutions may charge for banking services, including those related to checking accounts and licensed check cashers.

The IBA also held that the regulations conflicted with the NY DOL's prior opinion letters on the subject, specifically that the regulations require free withdrawals from ATMs and bank tellers when the NY DOL's previous position was that one or the other would suffice.

Despite its rejection of the regulations, the IBA agreed with the NY DOL that there is a valid concern that certain employees who do not have access to traditional bank accounts may incur significant fees when receiving wages by payroll debit card. The decision noted that NYLL § 193 already prohibits employers from charging an employee to receive his or her wages.

The NY DOL has three options in response to the IBA's decision: bring an Article 78 proceeding in New York Supreme Court to challenge the decision, revise the regulations, or do nothing. It is too soon to tell which option it will choose. The State Legislature may also decide to enact a statutory remedy.

The NY DOL's opinion letters state only that an employee must be allowed an unlimited amount of withdrawals (via either ATM or bank teller) at a bank branch in close proximity to the employee, and employees must be given notice of the terms

and conditions associated with using a payroll debit card, including a full disclosure of fees, but does not regulate their use further.

If you have any questions or would like further information, please contact your Seyfarth attorney, [Robert Whitman](mailto:rwhitman@seyfarth.com) at rwhitman@seyfarth.com, [Howard Wexler](mailto:hwexler@seyfarth.com) at hwexler@seyfarth.com or [Meredith-Anne Berger](mailto:mberger@seyfarth.com) at mberger@seyfarth.com.

www.seyfarth.com



Attorney Advertising. This One Minute Memo 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.)

Seyfarth Shaw LLP One Minute Memo® | February 21, 2017

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.