

# One Minute Memo®



## Final Payroll Card and Direct Deposit Regulations Issued by New York DOL

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**Seyfarth Synopsis:** The New York Department of Labor has recently adopted final rules, effective March 7, 2017, which regulate methods of wage payment in the state. The regulations impose notice, consent, and related requirements for employers who pay wages by any method other than cash or check -- including direct deposit and payroll cards.

After a series of proposed regulations (on which we previously [reported](#)), the New York State Department of Labor (“DOL”) adopted final regulations on September 7, 2016 governing permissible methods of wage payment, including payment through direct deposit and payroll debit cards. The final regulations closely track the earlier proposed regulations and will become effective on March 7, 2017.

The regulations require employers who use a form of payment other than cash or check, such as direct deposit and payroll debit cards, to obtain the employee’s informed consent to use such a method of payment.

The required consent requires, first, that a notice and consent form be distributed to the impacted employee that includes:

- A plain language description of the employee’s option for receiving wages;
- A statement that the employer cannot require the employee to accept wages in the form of a payroll debit card or by direct deposit;
- A statement that the employee cannot be charged any fees for services necessary for the employee to access his or her wages in full; and
- Employers who offer payroll debit cards must provide a list of locations where employees can access and withdraw their wages at no charge within reasonable proximity to their residence or place of work.

Consent must also be obtained without intimidation, coercion, or fear of adverse action for refusal to accept payment of wages by direct deposit or payroll debit card. Similarly, employers may not condition continued employment on payment of wages by direct deposit or payroll card.

Distribution and acceptance of notice and consent by electronic means is acceptable so long as the employee can view and print the notice and consent at work, without cost, and the employer also electronically notifies the employee of the right to print these materials.

Notice and consent must be provided in English *and* in the employee's primary language, if a template in the language is available from the Commissioner of Labor.

After distributing the required notice and obtaining consent, employers intending to use payroll debit cards must:

- Wait seven business days after an employee gives consent before paying the employee's wages by payroll debit card;
- Ensure local access to one or more ATMs that offer withdrawals at no cost to the employee located within a reasonable distance to the employee's home or place of work;
- Ensure the employee may withdraw up to the total amount of wages for each pay period or the balance remaining on the payroll debit card without the employee incurring a fee;
- Employers must give employees written notice thirty (30) days before any changes in the terms and conditions of a payroll debit card take effect in the employee's primary language or in a language the employee understands, in at least 12 point font.

Importantly, employers cannot charge employees any fees (directly or indirectly) related to their use of payroll debit cards or pass on the employer's costs associated with a payroll debit card account to its employees, including fees for ATMs used to withdraw pay, overdraft or low balance fees, a fee for written statements, or link the payroll debit card to any form of credit (i.e., a loan against future pay or a cash advance on future pay, although the regulations that allow such an advance are limited in scope and are effective only until 2018). Further, employers may not pay wages by payroll debit card unless they have ensured funds on the payroll card will not expire.

For employees covered by a valid collective bargaining agreement that expressly provides for methods of payment of wages, the employer must obtain the union's approval before paying covered employees by payroll debit card.

Employers are prohibited from discharging, penalizing, or otherwise discriminating against an employee for not consenting to receive wages through direct deposit or payroll debit card.

The final regulations provide a good opportunity for those employers who do not use payroll debit cards to also review their pay practices. For example, employers paying wages by check cannot impose any fees for the use of checks as a payment or impose a fee to replace a lost or stolen check. Similarly, employers who rely on direct deposit must maintain a copy of the employee's consent during the period of the employee's employment and for six years following the last payment of wages by direct deposit. In addition, the employer must provide the employee with a copy of his or her written consent for direct deposit and ensure such direct deposit is made to a financial institution selected by the employee.

If you would like further information, please contact your Seyfarth attorney, [Gena Usenheimer](mailto:gusenheimer@seyfarth.com) at [gusenheimer@seyfarth.com](mailto:gusenheimer@seyfarth.com), [Meredith-Anne Berger](mailto:mberger@seyfarth.com) at [mberger@seyfarth.com](mailto:mberger@seyfarth.com), or Neelhy Shah at [nsehah@seyfarth.com](mailto:nsehah@seyfarth.com).  
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**Seyfarth Shaw LLP One Minute Memo® | September 13, 2016**

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