

New York State Regulations Governing Payroll Debit Cards (Scheduled to Become Effective March 7) Held Invalid and Revoked

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The New York State Department of Labor (NYSDOL) issued final regulations in September 2016, significantly restricting the use of payroll debit cards and imposing disclosure and consent requirements for direct deposit. The regulations (12 NYCRR §192) were to become effective on March 7, 2017. However, in a February 16, 2017, decision, the New York State Industrial Board of Appeals (IBA) held

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the regulations “invalid” and “revoked.” “We find the regulations are invalid because they exceed [the NYS Commissioner’s] rulemaking authority,” the IBA held.

In striking down the regulations, the IBA noted that at least eight bills on payroll debit cards had been introduced in the New York State legislature in recent years, and none of the bills were enacted. “The legislature’s failure to amend the statute demonstrates their satisfaction with the current statutory language or their inability to reach consensus on the manner in which payroll debit cards should be regulated under the Labor Law, if at all,” the IBA found. The IBA also found the regulations infringed on banking regulations that set fees banks may charge and that the NYSDOL, by also seeking to regulate such fees, overstepped its jurisdiction. The NYSDOL has 60 days to appeal the decision.

While the IBA’s analysis was focused on the proposed provisions regulating payroll debit cards, the regulations also established new requirements regarding use of direct deposit. Although the provisions regarding direct deposit were not addressed by the IBA, the IBA Order revokes the entire regulation (12 NYCRR §192).

The regulations, which were scheduled to go into effect March 7, 2017, would have imposed greater obligations on New York employers if they wished to offer the option of wage payment through payroll debit cards and/or direct deposit including: (i) providing a detailed written notice to employees; and (ii) obtaining voluntary consent prior to payment by either of these methods. (For details, see our article, [New Regulation Restricts New York Employers Seeking to Pay Wages by Direct Deposit, Payroll Debit Cards.](#))

In anticipation of the effective date, the NYSDOL issued two model notice and consent templates, one for [payroll debit cards](#) and the other for [direct deposit](#).

Under the regulation, previously signed direct deposit and payroll debit cards consent forms would remain valid, but employers would still need to provide written notice that complies with the regulation before March 7, 2017, including notification of the right to withdraw consent.

Beyond the notice and consent requirements, the additional restrictions applicable to



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using payroll debit cards included:

- (i) imposition of a seven business day waiting period from execution of consent to initial payment by means of payroll debit card;
- (ii) a prohibition on a laundry list of potential fees;
- (iii) requiring that wages paid by payroll debit card may not be linked to any form of credit;
- (iv) a prohibition on employers passing on costs associated with payroll debit card accounts or otherwise receiving kickbacks from third parties associated with payroll debit card programs;
- (v) a prohibition on expiration of wages;
- (vi) an additional notice requirement if there are changes in the terms and conditions of the card accounts or fees charged to employees; and
- (vii) a requirement that union approval be obtained for unionized employees.

Separately, the NYSDOL issued regulations effective February 1, 2017, implementing amendments to the New York equal pay law that made it unlawful for an employer to prohibit employees from inquiring about, discussing or disclosing their wages or the wages of other employees. For additional information on this subject, see our blog post, [NYSDOL Adopts Regulations Implementing State Law Limiting Employer's Right to Restrict Employee Discussion Regarding Wages](#).

Please contact Jackson Lewis with any questions regarding these regulations or for assistance in achieving compliance with applicable requirements.



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