



July 8, 2015

Mr. Michael Paglialonga
Senior Attorney
New York State Department of Labor
State Office Campus, Building 12, Room 509
Albany, NY 12240

Re: Proposed Title 12 NYCRR pt. 192 relating to payroll debit cards

Dear Mr. Paglialonga:

I write on behalf of the American Financial Services Association (“AFSA”)¹ to register our serious concerns about the New York State Department of Labor’s proposed rule regarding payment of wages by payroll debit cards (“proposed rule”). AFSA counts among its members, payment networks and other service providers that deal with payroll cards. We are thus grateful for this opportunity to comment on a proposed rule which has the potential to remove the option for New York workers to receive their wages on a network branded payroll card by making the provision of these cards economically unsustainable in the marketplace.

Employees Benefit from Payroll Cards

A 2013 study by the Federal Deposit Insurance Corporation found that 8.5 percent of all households in New York are unbanked. In New York City, 825,000 adults do not have bank accounts.² This means they cannot receive their wages by electronic direct deposit and have historically been limited to being paid by cash or check. Prepaid payroll cards offer the unbanked a significantly better option than paper checks, by giving them a means to make electronic payments in stores, online, or over the telephone, along with greater security, convenience, and control over their finances. Payroll cards put unbanked employees on an equal footing with employees that have bank accounts.

Electronic wage payment offers employees immediate access to their wages, even for those who may be away from work for reasons such as illness or travel. Each pay period, employees without bank accounts or with limited access to financial services can incur significant fees to cash their paychecks or purchase money orders to pay their bills. A 2009 report estimated that while check cashing services cost a typical employee \$1,042 a year, and a basic checking account costs \$175 a year, payroll cards cost only \$75 a year.³ Not needing to cash a paycheck,

¹ The American Financial Services Association is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA member financial institutions offer vehicle financing, cards, personal installment loans and mortgage loans. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

² NYC Department of Consumer Affairs, *More Than 825,000 Adults in New York City do not have Bank or Credit Union Accounts According to new Citywide Study*, at http://www.nyc.gov/html/dca/html/pr2010/pr_022510.shtml (Feb. 25, 2010).

³ Mercator Advisory Group (2009).

saves employees time and money, particularly for those who live in rural parts of the state. Prepaid payroll cards can also serve as a money management tool for employees, allowing them to track expenses and better manage monthly budgets. Employees also face fewer problems related to handling checks and cash, such as theft and fraud.

Businesses Benefit from Payroll Cards

Prepaid payroll cards are popular with business owners because they allow businesses to increase efficiencies and more effectively control spending. Prepaid payroll cards enable businesses to minimize paperwork, streamline costs, simplify record keeping, accurately track expenses, improve efficiency, and can help increase employee satisfaction. On top of this, prepaid payroll cards reduce the amount of time and money businesses spend on issuing checks and processing paper and eliminate the need for a two-tiered payroll system because everyone can receive electronic payments. The cost savings realized by companies can allow them to invest in new capital or jobs, or pass the savings onto consumers.

In the restaurant industry – a significant employer in New York – for example, prepaid payroll cards are a very welcome innovation, allowing operators to establish an all-electronic payroll system by supplementing direct deposit with prepaid for employees that do not have bank accounts. Approximately 3.6 million – or 30 percent – of restaurant industry employees in the United States do not have access to mainstream banking, either through circumstance or choice.⁴ On average, every paper paycheck costs a restaurant around \$2.⁵ Direct deposit by contrast, costs only about 35 cents per payment. Lost checks cost an employer \$8 to \$10 per check to generate a replacement, and time spent tracking and managing state escheat regulations for unclaimed paychecks is very burdensome for restaurant operators.

The Proposed Rule Risks Sacrificing Undoubted Benefits

The proposed rule contains a number of elements that will render payroll cards unviable for those that provide them. The rule takes a blanket approach to the prohibition of imposing fees including fees on overdrawn or inactive accounts, transaction fees, maintenance fees, inactivity fees, and fees for providing written statements to the cardholder. It is important, indeed vital, that fees relating to payroll cards are kept to an absolute minimum, but this wholesale approach makes no attempt to assess the merits or otherwise of individual fees.

In addition, the requirement that employees must wait seven business days before electing to receive their wages via a payroll card is likely to act as a disincentive for adoption. Many will instead opt for instant payment by paper check.

On top of this, the proposed rule is scheduled to take effect immediately after the close of this 45-day notice and comment period. This does not provide employers with enough time to

⁴ National Restaurant Association, *Solve Your Direct Deposit Dilemma with a Prepaid Card*, available at <http://www.restaurant.org/Manage-My-Restaurant/Workforce-Management/Training/Solve-your-direct-deposit-dilemma-with-a-prepaid-c>.

⁵ Society for Human Resource Management, *Many Small Businesses Still use Paper Checks for Pay*, at <http://www.shrm.org/hrdisciplines/compensation/articles/pages/directdeposit.aspx> (Aug. 26, 2011).

manage the inevitable upsets to payroll services if card issuers opt to cease business in New York. This disruption to employees and employers alike serves no useful purpose.

We respectfully request that you give our concerns due consideration and reconsider the proposed rule in its current form. If you have further questions, or would like to discuss this further, I can be contacted by phone at 952-922-6500 or email at dfagre@afsamail.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'Danielle Fagre Arlowe', written in a cursive style.

Danielle Fagre Arlowe
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