



# Eye On Washington Regulatory Update



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## New York Department of Labor Final Rules Governing Payroll Cards and Direct Deposit

On September 7, 2016, the New York Department of Labor issued final rules governing the use of payroll cards and direct deposit. These rules are generally viewed as more protective of employees and more restrictive than those of any other state. They apply to all employees who work in New York, except those in an executive, administrative, or professional capacity, who earn more than \$900 weekly, and those working on farms not connected with a factory. The [rules](#) are effective on March 7, 2017.

### Requirements and Restrictions for Payroll Cards

Employers that offer direct deposit and/or payroll cards to employees will be required to observe various program requirements, fee and other restrictions, and notice and consent requirements. Employers that offer payroll cards in New York should review the final rule in detail for other applicable provisions. Here are the most prominent provisions.

- The program must provide local access to at least one automated teller machine (ATM) within a reasonable distance of the employee's work or home that offers withdrawals at no cost to the employee.
- It must provide at least one way to withdraw up to the total amount of wages for each pay period, or the balance remaining on the payroll card, without a fee.
- Payroll cards cannot be linked to any form of credit, including a loan or advance against future pay. However, an employer may cover an occasional inadvertent overdraft transaction if there is no charge to the employee.
- At least 30 days before any change in the terms and conditions of a payroll card takes effect, employers must provide a written notice in plain language, in 12-point font and in the employee's primary language or in a language the employee understands, of any change to fees or terms or conditions of the payroll card.

- Employers cannot pass on costs associated with a payroll card to an employee, or receive any financial consideration from the issuer, card sponsor, or any third party for delivering wages via payroll card.

### Fee Restrictions

Employees may not be charged a fee for any of the following:

1. Application, initiation, loading, participation or other action necessary to receive wages on a payroll card;
2. Point-of-sale transactions;
3. Overdraft, shortage, or low balance status;
4. Account inactivity;
5. Maintenance;
6. Telephone or online customer service;
7. Accessing balance or other account information online, by Interactive Voice Response or other automated system, or at any ATM in the network;
8. Providing written statements, transaction histories or the issuer's policies;
9. Replacing the payroll card once per year;
10. Closing an account or issuing payment of the remaining balance;
11. Declined transactions at an ATM that does not provide free balance inquiries; and
12. Any fee not explicitly identified — by type and by dollar amount — in the terms and conditions provided to the employee.



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## Notice and Consent

Employers who use methods of payments other than cash or check must furnish a written notice in English and the employee's primary language.

Notices related to direct deposit authorizations must include a plain language description of all of the employee's options for receiving wages. It must explain that the employer may not require the employee to accept wages by direct deposit, and that the employee may not be charged any fees to access their wages in full. Notices related to payroll cards must comply with the above, and provide a list of locations where employees can access their wages — at no charge — within reasonable proximity to their residence or worksite. Employers may comply with this requirement by providing a link to a website, which provides a list or mechanism, by which an employee can access a list of ATM locations.

Employers must obtain each employee's consent in writing, ensuring that the employee's informed consent is obtained without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment of wages by direct deposit or payroll card. Payment by direct deposit or payroll card cannot be a condition of hire or of continued employment.

Notices and consents may be electronic, so long as an employee can view and print both the notice and the consent while the employee is at work and without cost, and the employee is notified of his or her right to print such materials through electronic process.

Employers must wait at least seven business days after receiving the employee's consent before taking action to pay wages by payroll card. Employees may withdraw their consent at any time, and employers must make any withdrawal effective within two pay periods.

## Languages

Written notices and consents must be provided in English and in the primary language of the employee, when a

template notice and consent in such language is available from the DOL. The agency plans to make disclosure and consent templates available in certain other languages (Spanish, Chinese, Haitian Creole, Korean, Polish, Russian, French, Arabic, Bengali, Tagalog, and Urdu). It is not necessary for employers to translate notices into languages not supported by the DOL templates. The DOL-provided templates will contain all of the information necessary for compliance with the notice and consent requirements of the rule. Employers are free to use these templates, or to model their notices after such templates, or develop their own.

## Impact to Existing Direct Deposit and/or Payroll Card Authorizations

Prior authorizations ("consents") remain valid, but new notices must be provided to all employees that have authorized such methods before March 7, 2017. Employees must be notified of their right to withdraw consent to direct deposit or payroll card through such notices.

## Payroll Card Legislative Trends and What to Expect in 2017 and the Future

Many lawmakers have become increasingly interested in payroll cards, as this method of wage payment continues to grow in popularity with employees. This year alone, over seven states considered legislation or regulations concerning payroll cards. Employers should expect to see continued efforts from state and federal policy makers to facilitate or further regulate elements of payroll cards. Connecticut's recent legislation offers a point of comparison:

### Connecticut's Public Act 16-125 Is Similar to New York's Rules

As reviewed in a recent *Eye on Washington*, Connecticut adopted similar legislation in June 2016 to update the state's labor laws related to wage payments. The Connecticut law is similar in some respects to the New York regulation, but is generally less restrictive. Similarities follow:



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- Employees must be able to voluntarily change their method of wage payment at will
- Employers must also offer direct deposit and paper checks
- Disclosure of all terms and conditions, including a list of possible fees
- Express authorization in writing (cannot be a condition of employment)
- Disclosure must explain how to access wages with no fees; how to minimize fees; how to check account balances without fees
- Three free withdrawals per pay period without fees
- No fees for issuance, loading, maintenance, closing, low balance, inactivity (first 12 months), or point-of-sale transactions
- One free replacement card annually
- No link to credit; no overdrafts
- No declined transaction fees (first two declined transactions per month)
- A substantial number of in-network ATMs

The Connecticut Act became effective on October 1, 2016.

Depending on how the New York rules are interpreted, the most significant differences between the two states are the seven-day waiting period and the requirement for apparently unlimited local access to a free ATM. Further, the "reasonable distance" provision in the New York rule remains undefined, although the agency has been asked to offer additional guidance on this point.

## CFPB Final Rules October 5, 2016

The Consumer Financial Protection Bureau (CFPB) released final rules, which serve to establish new consumer protection provisions and disclosure requirements for prepaid accounts, including payroll cards. These are generally intended to help consumers (including employees considering a payroll card option) to understand their alternatives, and all associated costs and features. A separate *Eye on Washington* will detail the implications for employers and employees.

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