

Tighter Restrictions on Employer Use of Payroll Cards in New York Revoked

By Colette Gulick, J.D. Candidate 2018 | April 5, 2017

New York regulations scheduled to take effect on March 7, 2017, that would more tightly govern employer use of payroll cards to pay workers were [overturned](#) by the New York State Industrial Board of Appeals, an independent review board. The new regulations would have provided workers considerable protection from their wages being further reduced through fees imposed on basic uses associated with their payroll cards. The review board concluded that the New York State Department of Labor overstepped its rule-making authority in issuing these regulations and effectively entered into the “regulation of banking services.”

New York employers may distribute wages to employees through payroll cards, which function like debit cards and allow workers to access their pay at an A.T.M. This method provides employers with an alternative option so that they may avoid wage distribution through directly depositing the wages into an employee’s checking account or through issuing individualized paper checks. This method of wage distribution has become increasingly popular. Approximately [200,000 workers](#) in New York receive their wages this way, and approximately \$12 billion in wages were distributed via payroll cards in 2015. Payroll card wage distribution is common for employers in the retail and service industries.

The New York State Department of Labor issued the [new rules on September 7, 2016](#) to ensure consumer protection for workers and to guarantee that workers’ wages are not decreased further simply by their need to withdraw money from their paycheck, speak with a representative, or review a prepaid card’s balance, in addition to other basic uses. The rules were created in response to the concern that the payroll cards negatively impact many low-wage workers in New York through these unreasonable fees. The fees imposed on payroll card use can in certain cases effectively reduce a worker’s pay to below the [minimum wage](#).

The regulations would have forced employers to ensure employees could access at least one A.T.M. located near their work or home where the employee “[could make free, unlimited wage withdrawals](#).” However, the employer and State Department of Labor would need to decide what constituted an A.T.M. being within an acceptable distance of an employee’s work or home. The regulations also would have imposed requirements regarding consent from employees to receive wages through the payroll cards, and notice from employers to employees about wage options and more.

Proponents of the payroll card system argue that the prepaid cards provide an attractive option for employees without bank accounts. The prepaid card method benefits employers by providing a payment method that can be “[cheaper and more efficient than checks](#).” Critics of the struck-down regulations argue that the regulations would have imposed excessive compliance costs on employers and would chill employers’ use of the payroll card method.

The Industrial Board's decision may be appealed by the New York State Department of Labor if the Labor Department chooses to pursue that option.