

November 24, 2015

By email to regulations@labor.ny.gov

Michael Paglialonga

NYS Department of Labor

Building 12

State Office Campus, Room 509

Albany, NY 12240

Re: Methods of Payment of Wages

Revised Rule Making 10/28/15 N.Y. St. Reg. LAB-21-15-00009-RP

Dear NYS Department of Labor:

The National Consumer Law Center appreciates the opportunity to comment on the revised proposed rules on behalf of our low income clients. The proposed rules would create strong worker protections and rein in abusive practices that are rampant in the payroll card industry. We commented on the original proposed rules, and are pleased that some of our recommendations are reflected in the revised proposal. We submit these comments as a supplement to our earlier comments, and make some additional recommendations below to further strengthen the rules.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. We publish a series of consumer law treatises, including Consumer Banking and Payments Law, which covers payroll cards. We also just published the report Rating State Government Payroll Cards: Thumbs Up for Cash Access; Thumbs Down on Overdraft Fees.¹

As growing numbers of employers seek to steer workers to payroll cards, it is vital that New York State ensure that workers have fair and unobstructed access to their wages. We strongly support the proposed rules, which would prohibit employers in New York State from forcing workers to accept their wages on payroll cards; ban payroll card issuers from charging workers high and hidden fees simply to access their own wages; and protect working New Yorkers from other payroll card abuses.

Payroll cards can help employers to reduce payroll costs. However, payroll card programs can simply shift those costs to their low-wage workers. Payroll cards tend to be used to pay workers who have very low wages. Those workers cannot afford to lose any of their wages to fees. By

¹ The report is available at <http://www.nclc.org/issues/rating-state-government-payroll-cards.html>.

preserving workers' choice in how they are paid, and by prohibiting most payroll card fees, the proposed rules will ensure that working New Yorkers, especially low-wage workers, are not unfairly deprived of any part of their hard-earned wages.

The revised proposed rules address the most pressing problems that workers face with respect to payroll cards. We strongly support the provisions of the proposed rules that would:

- Guarantee workers a choice in how they receive their wages, and require employers to obtain workers' informed consent before paying workers on payroll cards.
- Ensure that workers paid by payroll card are able to access their wages in full, for free, and that workers have local access to at least one ATM at which they can make unlimited free withdrawals. (We are concerned, however, that the revised proposal would ensure that workers would be able to make unlimited, free withdrawals only at "one or more" local ATMs, rather than at a "network" of ATMs, as set forth in the original proposed rules; this change could impede some workers from accessing their wages in a timely manner.)
- Prohibit other unfair and excessive fees, such as fees for application, initiation, maintenance, account balance inquiries at in-network ATMs, point of sale transactions, overdrafts, inactivity, and customer service.
- Prohibit any form of credit on payroll cards; ban kickbacks to employers from payroll card issuers; and protect workers from unfair, deceptive, or abusive practices in relation to the payment of wages by payroll card.

We make the following recommendations:

- We understand that DOL deleted the proposed requirements regarding periodic statements, transaction histories, and electronic balance notifications, because at least certain of these protections are provided under federal regulation (12 CFR § 1005.18(b), Regulation E of the Electronic Funds Transfer Act). However, there are two important protections that are not in Regulation E that we urge DOL to retain. First, Regulation E does not give workers a right to sign up for a regular monthly paper statement if they want one. Workers should not have to call every month to get a statement if they want a regular statement for their recordkeeping and to make sure that they can monitor fees and charges. Second, Regulation E only requires a one-time notice of the right to obtain statements upon request. Workers should get an annual written notice of their rights.

- We commend the DOL on its proposal to provide written template notices in Spanish, Chinese, Haitian Creole, Korean, Polish, and Russian. We urge the DOL to also make the template notice available to employers in – at the very least – the following languages also spoken widely by workers throughout New York State: French, Arabic, Bengali, Tagalog, and Urdu. See <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>. This will ensure that a higher percentage of workers are fully informed and receive critical information before they agree to payment of wages by payroll cards.
- Finally, we urge the DOL to maintain complaints from workers about violations of the revised proposed rules in a readily accessible manner, so that they may be easily retrieved in response to public requests for information.

We commend the DOL for proposing strong rules to protect working New Yorkers from coercion, fee-gouging, and other payroll card abuses, and we look forward to the implementation and enforcement of strong final rules.

Thank you for the opportunity to comment.

Sincerely,

Lauren Saunders
Associate Director
National Consumer Law Center
(on behalf of its low income clients)