

SEPTEMBER 2016

NEW YORK STATE ENACTS NEW REGULATIONS LIMITING PAYROLL DEBIT CARD FEES

By Raquel A. Gutiérrez

As we wrote about in our previous [alert](#), on May 27, 2015, the New York State Department of Labor issued proposed regulations setting forth specific requirements that employers must follow if they pay their employees by check, through direct deposit or the use of payroll debit cards. On September 8, 2016, Governor Andrew M. Cuomo enacted these regulations, the country's most comprehensive payroll card protections. Payroll cards have become increasingly popular in New York State, with approximately 200,000 workers now using debit cards, as they provide several benefits to businesses, such as saving check printing and distributing costs as well as eliminating fees associated with replacing lost or stolen checks. Under the new regulations, payroll card companies and employers must, among other things, follow the following guidelines:

- Employers who use payroll cards are responsible for guaranteeing access to at least one fee-less ATM near where their employees live or work.
- The payroll cards must include unlimited free withdrawals from a fee-less ATM.
- Employers cannot pass on costs associated with a payroll debit card account to an employee and employers are prohibited from receiving a kickback or other financial remuneration from the issuer, card sponsor or any third party for using payroll debit cards.
- Eliminating fees, including those for customer service, startup or maintenance, overdraft, inactivity, balance inquiries and account closing, among others.

The new regulations apply to all existing methods of wage payments as well, namely: cash, paycheck and direct deposit. In addition, the regulations also codify the existing requirement that employers provide a local, no-cost check cashing alternative for their employees.

Employers who elect to pay their employees through payroll debit cards should expect that their practices will be carefully scrutinized by the Department of Labor and other governmental officials. Thus, employers should be cautious and speak to their labor and employment counsel to ensure all new payment regulations are being followed. Employers must also work with their payroll companies and debit card issuers to ensure that these regulations are followed by them as well. If there are any errors made by these third-party vendors, the employer is ultimately on the hook. Moreover, prudent employers should also re-examine all their new hire paperwork and confirm that their direct deposit forms and payroll debit card enrollment forms comply with existing New York law as well as ensure that all wage statements and other related records are in compliance.

For more information about this alert, please contact [Raquel A. Gutiérrez](mailto:rgutierrez@foxrothschild.com) at rgutierrez@foxrothschild.com or 646.601.7637, or any member of the firm's [Labor & Employment Department](#).

Attorney Advertisement

© 2016 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.

www.foxrothschild.com