

Labor and Employment Alert

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Increasing Scrutiny of Employee Pay Cards

The use of pay cards (i.e. prepaid payroll debit cards) to pay employee wages has come under increased scrutiny in recent weeks. One current controversy over pay cards stems from a class action lawsuit filed against a McDonald's franchise owner in Pennsylvania in June. In that case, the plaintiff alleges that she was required to receive her wages on a pay card, and was subject to numerous fees to access her earnings and use the card. The particular pay card at issue in that case is the JP Morgan Chase Payroll Card.

That lawsuit received considerable media attention, and action from legislators and government officials soon followed. A state representative in Pennsylvania has announced plans to introduce a bill banning the use of pay cards for employee wages. Earlier this month, the New York Attorney General sent a request for information to approximately twenty companies – primarily large retail and restaurant chains – asking them to disclose their pay card practices. Democrats in the U.S. Senate have also called for a federal probe of the practice.

The legality of pay cards is largely governed by state payroll laws, and thus the claims that employees might assert as a result of receiving their wages on pay cards may vary from state to state. The primary concerns, however, depend on (1) whether the pay card is optional and employees are able to choose traditional methods of payment instead, such as regular checks or direct deposit, (2) the type and amount of fees charged to the employee for using the pay card, and (3) the extent to which those fees can be avoided, such as with free ATM withdrawals. Federal law could also be implicated, though. For example, the California Division of Labor Standards Enforcement (DLSE) has opined that pay cards must be optional due to a Federal Reserve Board regulation stating that an employee cannot be required to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment. (12 C.F.R. § 205.10(e)).

Given the recent scrutiny that pay cards are receiving, we expect increased private litigation and government enforcement activity against employers that utilize them. If you are currently using pay cards, or considering them, now is a good time to review your program. If you have any questions about the pay card program you are using or considering, or the ongoing developments in this area, please feel free to contact us.

Contact Information

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