



American Payroll Association

Government Relations • Washington, DC

March 2, 2015

STATEMENT IN OPPOSITION TO SENATE BILL 101, unless amended

The American Payroll Association¹ (APA) appreciates the opportunity to submit the following statement in opposition to Senate Bill 101 (SB 101), “A bill for an Act concerning the authority of employers to pay wages to employees electronically.”

The Colorado Revised Statutes have allowed employers to compensate their employees using beneficial electronic payment methods for many years. In fact, Colorado – like half of the states across the nation – currently allows employers to offer their employees the choice between direct deposit and a payroll card without also offering a paper paycheck option. The purpose of SB 101, therefore, is not to “allow” employers to pay wages by direct deposit or using a payroll card, as the Bill Summary suggests. To the contrary, ***SB 101 would limit the ability of employers to implement beneficial electronic wage payment programs by imposing new requirements on direct deposit and payroll cards that make little sense, and by requiring employers to reintroduce inefficient and costly paper paychecks into their payroll systems.*** For these reasons, the APA strongly opposes SB 101, unless amended. We have attached to this statement a proposed revision for your consideration.

Electronic Wage Payment Under Current Colorado and Federal Law

Payroll cards have been a legislatively authorized method of wage payment in Colorado since 2008. In that year, the Colorado Legislature added section 8-4-102.5 to the Revised Statutes allowing employers to pay wages using payroll cards so long as employees are able either to access their entire net pay from the payroll card account at least once each pay period without cost or to choose another method of payment such as direct deposit. The Revised Statutes already authorized direct deposit with an employee’s written consent.

Although Colorado law does not require alternative methods of wage payment when employees are able to withdraw their full net wages without cost from a payroll card account, federal banking law does. Specifically, the Electronic Fund Transfer Act and its implementing

¹The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

regulation, Regulation E, require that employers who offer payroll cards also offer at least one other payment option.²

Based on these authorities, many employers (including many APA members) with employees in Colorado have implemented electronic wage payment programs that give employees the choice between direct deposit and a payroll card.

SB 101 Would Be Harmful to Employers and Their Employees

SB 101 would repeal section 8-4-102.5 of the Revised Statutes and address both direct deposit and payroll cards in section 8-4-102. The bill would require that employers who offer payroll cards also provide employees with the option of being paid by direct deposit, and that they notify employees of any fees associated with both methods of wage payment. While we generally support these provisions, the fee disclosure requirement should not apply to traditional direct deposit since employers are not privy to the terms and conditions of employee-established checking or savings accounts. In addition, we opposed other provisions of SB 101.

The APA strongly opposes the amendments to SB 101 that would require employers to reintroduce inefficient paper paychecks into their payroll systems.

Electronic payment methods are far safer, more secure, and less expensive than paper paychecks. According to the Office of the Comptroller of the Currency, more than four million paychecks are lost or stolen each year.³ Moreover, many employees who receive paper paychecks are unbanked or have limited access to traditional financial services. A 2013 study by the Federal Deposit Insurance Corporation found that 6.4% of Colorado households are unbanked (having no bank account) and another 17.3% Colorado households are under-banked (having a checking or savings account, but still reliant on alternative financial services such as check cashing services).⁴ These employees often rely on expensive check cashing services to access their wages. Studies have shown that low wage earners can spend hundreds of dollars a year on checking services alone.⁵

In contrast, direct deposit and payroll cards guarantee employees full access to their net wages on payday. The vast majority of payroll cards are branded, meaning that they bear a Visa, MasterCard, or Discover logo. These cards can be used anywhere that the payment branded is accepted. Indeed, ***employees can take their payroll cards to the teller at any financial institution that is a member of the payment brand (tens of thousands of branch locations nationwide) and receive up to their full net wages at no cost to them at least once each pay period.*** This allows employees to treat their payroll cards like a plastic paycheck and cash out their wages each pay period without cost.

²15 U.S.C. §1693k; 12 C.F.R. §1005.10(e)(2); CFPB Bulletin No. 2013-10 (September 12, 2013).

³ Office of the Comptroller of the Currency, *Payroll Cards: An Innovative Product for Reaching the Unbanked and Underbanked* (June 2005).

⁴2013 FDIC National Survey of Unbanked and Underbanked Households, available at <https://www.fdic.gov/householdsurvey/2013appendix.pdf>.

⁵The San Francisco Office of Financial Empowerment estimates that unbanked workers spend an average of \$711 a year on check cashing fees. See, <http://currencsf.org/>; See also, T. Sloane and P. Hewitt, *Payroll Cards: 100% Electronic Payments 80% of the Time, Crossing the Market Finish Line* (Mercator Advisory Group January 2009) (finding that employees who rely on check cashing services can spend over \$1,000 each year on fees); Metropolitan Policy Program at Brookings, *Banking on Wealth: America's New Retain Banking Infrastructure and Its Wealth-Building Potential* (January 2008) (A low wage earner can spend as much as \$40,000 over his or her life time in check cashing fees).

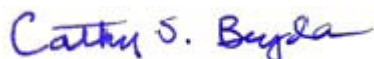
Importantly, direct deposit and payroll cards also allow employees to deliver wages to employees in a timely manner. This is true even when the employee is away from the workplace and even when faced with unexpected contingencies such as severe weather and natural disasters. Many APA members first implemented electronic wage payment programs after severe weather conditions made it impossible to deliver paychecks to employees at a time when employees needed access to their funds the most. Thus, an employer's ability to pay all of its workers electronically benefits not only the employer but its employees as well. In light of these benefits, it is not surprising that the State of Colorado has mandated electronic wage payment for state employees.⁶

The APA also opposes the recent amendment to SB 101 that would require employers to provide employees with two withdrawals each pay period either at an ATM or by electronic transfer. This provision makes little sense. A fundamental principal of state wage and hour law is full and free access to wages on payday. Yet neither of the methods of withdrawal set forth in SB 101 would guarantee such access.⁷ ATMs only disburse funds in \$5, \$10 and/or \$20 increments. Thus, employees cannot obtain access to their full wages through ATM withdrawals. For this reason, no other state specifically requires free ATM withdrawals in connection with payroll card accounts or any other method of wage payment. Instead, consistent with the philosophy behind the wage and hour laws, the vast majority of states require that employees be provided at least one means of accessing their full net wages in cash each pay period and wisely leave the provision of other banking services to market competition among payroll card vendors.

Conclusion

The APA opposes SB 101, unless amended, because it would strip employers of the ability to offer purely electronic wage payment programs. Requiring employers to reintroduce the systems necessary to process, distribute, and deliver paper paychecks would be costly, both initially and on an ongoing basis, and would be harmful to employers as well as their employees.

We would welcome the opportunity to discuss the above issues with you further. In this regard, please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (650-320-1824).



Cathy Beyda, Esq.
Chair, GRTF Payroll Card Subcommittee
American Payroll Association



William Dunn, CPP
Director, Government Relations
American Payroll Association

⁶ State of Colorado Fiscal Rules, Rule 9-2.

⁷ Many of the employees who use payroll cards do so because they do not have a savings or checking account. Thus, to the extent that the ability to make electronic fund transfers refers to transfers between accounts, this ability would be of little help to many employees who want to access their wages in cash.

Colorado Senate Bill 101
Proposed Revision

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-4-102, **amend** (2); and **repeal** (2.5) as follows:

8-4-102. Proper payment – record of wages. (2) Direct deposit and payroll card. ~~(a) Nothing in this article shall prohibit an employer from depositing~~ NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, EACH EMPLOYER IN THIS STATE, AT ITS DISCRETION, MAY PAY BY ELECTRONIC CREDIT TRANSFER ALL wages due or to become due or an advance on wages to be earned ~~in an~~ WITH THE WRITTEN CONSENT OF THE EMPLOYEE, TO HIS OR HER account in any bank, savings and loan association, credit union, or other financial institution authorized by the United States or one of the several states to receive deposits in the United States ~~if the employee has voluntarily authorized such deposit in the financial institution of the employee's choice.~~ OR BY DEPOSITING AN EMPLOYEE'S WAGES ON A PAYCARD IF THE FOLLOWING REQUIREMENTS ARE MET:

(I) THE EMPLOYEE HAS THE OPTION OF BEING PAID BY ELECTRONIC CREDIT TRANSFER TO HIS OR HER ACCOUNT IN ANY BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, OR OTHER FINANCIAL INSTITUTION AUTHORIZED BY THE UNITED STATES OR ONE OF THE SEVERAL STATES TO RECEIVE DEPOSITS IN THE UNITED STATES IN LIEU OF CREDIT TO A PAYCARD;

(II) THE EMPLOYEE IS PROVIDED NOTICE OF THE OPTION TO DESIGNATE AND AUTHORIZE AN ACCOUNT FOR ELECTRONIC CREDIT TRANSFER TO BE EFFECTIVE AT THE END OF THE FIRST PAYROLL PERIOD;

(III) THE EMPLOYER PROVIDES THE EMPLOYEE WITH A WRITTEN OR ELECTRONIC EXPLANATION OF ANY FEES ASSOCIATED WITH THE PAYCARD;

(IV) THE EMPLOYER PROVIDES THE EMPLOYEE WITH A FREE MEANS OF ACCESS TO THE ENTIRE AMOUNT OF NET PAY AT LEAST ONCE EACH PAY PERIOD ;

(V) THE EMPLOYER OFFERS A PROGRAM TO THE EMPLOYEE THAT DOES NOT CHARGE A MONTHLY MAINTENANCE FEE TO USE THE PAYCARD;

(VI) THE EMPLOYER ALLOWS THE EMPLOYEE TO ALWAYS HAVE THE OPTION TO BE PAID BY ELECTRONIC CREDIT TRANSFER IN LIEU OF CREDIT TO A PAYCARD AND THE ABILITY TO CHANGE THE ACCEPTANCE OF WAGES FROM PAYCARD TO ELECTRONIC CREDIT TRANSFER.

(b) AS USED IN THIS SECTION, "PAYCARD" MEANS A CARD DISTRIBUTED TO AN EMPLOYEE BY AN EMPLOYER, OR BY ANOTHER ENTITY

BY ARRANGEMENT WITH THE EMPLOYER, THAT PROVIDES AN EMPLOYEE WITH IMMEDIATE ACCESS TO THE EMPLOYEE'S WAGES.

~~(2.5) Paycard. (a) Nothing in this article shall prohibit an employer from depositing an employee's wages on a paycard, so long as the employee:~~

~~(I) Is provided free means of access to the entire amount of net pay at least once per pay period; or~~

~~(II) May choose to use other means for payment of wages as authorized in subsections (1) and (2) of this section.~~

~~(b) As used in this section, "paycard" means an access device that an employee uses to receive his or her payroll funds from his or her employer.~~