

American Payroll Association

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Statement in Opposition to HB 1404

The American Payroll Association¹ (APA) appreciates the opportunity to submit the following statement in opposition to House Bill 1404 (HB 1404). If enacted, HB 1404 would impose unnecessary and unduly burdensome requirements on the use of payroll cards. Indeed, the requirements of HB 1404 are so restrictive and cost prohibitive that they likely will establish a *de facto* ban on the use of payroll cards in New Hampshire, hurting the very workers the bill seeks to protect. As discussed below, current state and federal provisions already provide abundant consumer protections on this voluntary and beneficial payment method.

The APA's Position on Payroll Cards

Last year, the APA supported legislation (SB 100/HB 357) that would have allowed employers to pay their employees in New Hampshire using electronic means only (i.e., direct deposit and payroll cards). After the legislative session ended, we found articles suggesting that the APA promoted payroll cards over direct deposit² and an article subtitled "The American Payroll Association Would Have Moved New Hampshire Workers Over to Fee-Laden Payroll Cards."³

To be clear, the APA has never promoted payroll cards over direct deposit. To the contrary, we recognize that for the vast majority of workers, direct deposit is the best way to receive wages. Indeed, in a statement we submitted in support of SB 100, we stated:

¹ The 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 Affairs 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.

² Seacoast Online, Letter to the Editor from Rep. Michael Cahill (June 20, 2013), <http://www.seacoastonline.com/articles/20130620-OPINION-306200394>.

³ New Hampshire Labor News, *Granite State Progress Applauds NH House Standing Up for Employee Protections During HB 357 Committee of Conference* (June 18, 2013), available at <http://nhlabornews.com/2013/06/granite-state-progress-applauds-nh-house-standing-up-for-employee-protections-during-hb-357-committee-of-conference/>.

Employers offering payroll cards would be required to also give each employee the option of being paid by direct deposit to a financial institution of the employee's choosing. It is fully anticipated that most employees will enroll in direct deposit. In fact, it is highly likely that a majority of employees already participate in direct deposit.

We then cited a study revealing that three out of four working Americans who have access to direct deposit use it, and 97% of the people who use direct deposit are very satisfied with it.⁴

Payroll Cards Offer a Valuable Solution for Underserved Employees.

Many well respected policymakers, consumer advocates and government regulators agree that payroll cards can be a very beneficial option for underserved workers who often are forced to rely on expensive alternative financial services, such as check cashers, to access their wages. As an example, earlier this month, Javier Palomarez, President and CEO of the United States Hispanic Chamber of Commerce, published an Op-Ed emphasizing that "Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation."⁵ A copy of the Op-Ed is attached for your convenience.

Similarly, a Federal Reserve Bank study⁶ concluded that payroll cards are the most cost-effective transaction accounts available for consumers without bank accounts; less costly than checking accounts and general purpose prepaid debit cards, and less than one-fifth the cost of check-cashing services.

According to the FDIC, 14.4% of all New Hampshire households are either unbanked (having no checking or savings account) or under-banked (having a checking or savings account, but still reliant on alternative financial services such as check cashing).⁷ Although employers are required to provide all employees with a means of cashing their payroll checks, many workers still rely on expensive check cashing services. New Hampshire law imposes no limit on the amount of fees that check cashing services may charge.

Payroll cards offer underserved workers with a valuable solution. The vast majority of payroll cards are branded meaning that they bear the logo of a major payment brand such as Visa or MasterCard. These cards can be used anywhere that the payment brand is accepted. For example, employees can take their cards to more than 90,000 bank branches nationwide and receive their full wages from the bank teller without cost. Employees may also choose to use

⁴ See, *Frequently Asked Questions about Direct Deposit via ACH*, available at <http://www.electronicpayments.org/individual/direct-deposit/learn>.

⁵ For another excellent discussion of payroll cards from an organization committed to protecting low wage earners, see Benjamin Mangan, *Stop Blacklisting Payroll Cards for Worker*, <http://www.linkedin.com/today/post/article/20130710205603-132220-stop-blackballing-payroll-cards-for-workers>.

⁶ Federal Reserve Bank of Philadelphia: *The Cost Effectiveness of Stored-Value Products for Unbanked Consumers*, May 2005.

⁷ 2011 FDIC National Survey of Unbanked and Underbanked Households, available at http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.

their cards to make point-of sale purchases, receive cash back from point of sale transactions, make purchases by mail, phone or internet and pay bills online. These are all things underserved employees cannot do when they only carry cash. Employees also are provided with many ways of accessing their account balance without fees and with budgeting tools such as mobile applications and low balance text alerts to help them manage their finances.

Current Treatment of Payroll Cards Under State and Federal Law

Section 275:43(I) of the New Hampshire Revised Statutes requires that employers pay all wages to employees on designated paydays and “at no cost to the employee.” When employees are paid by check, this means that the check must be drawn on a financial institution convenient to the place of employment where suitable arrangements have been made for employees to cash their check for the full amount due. When employees voluntarily elect to be paid using a payroll card, the employer must provide the employee with at least one means to withdraw up to and including the full amount of the balance in the payroll card account each pay period at a financial institution or other location convenient to the place of employment. In other words, the employee must be able to treat their card like a “plastic paycheck.”

Section 275:43 also requires that the employee be notified of all of his or her wage payment options and that the employer provide a number of other disclosures including a list of potential fees. Participation in the program must be voluntary, and a new written consent is required each time there is a change in the program. Employees must be provided with the option of changing their wage payment method at any time, without penalty. A complete list of existing requirements relating to payroll cards under state law is set forth in the Appendix to this Statement.

In addition to the existing state law protections, the federal Electronic Funds Transfer Act and its implementing regulation, Regulation E, provide a number of additional consumer protections on payroll cards. For example, Regulation E limits cardholder liability when a lost or stolen card is used fraudulently so long as the cardholder reports the lost or stolen card within a specified period of time. Regulation E also requires that dispute resolution procedures be available to cardholders and that all terms, conditions and fees be clearly disclosed. This permits payroll cardholders to easily understand how to use the card to their best advantage. It also requires the card issuer to provide employees with periodic activity statements showing all transactions including payroll deposits, ATM transactions and purchases. Although overdrafts on payroll cards are uncommon, recent revisions to Regulation E prohibit fees for overdrafts without prior consent.

Finally, all of the protections offered on debit products by the major payment brands (e.g., Visa, MasterCard and Discover) also are available on payroll cards and are free of charge. These include purchase protection, dispute resolution procedures and zero liability programs.

HB 1404 Would Unnecessarily Encumber the Use of Payroll Cards in New Hampshire

At a time when free checking accounts are becoming significantly less common, HB 1404 would require employers who want to offer payroll cards to provide their employees with a number of

free banking services. This is not required for any other method of wage payment and is likely to be cost prohibitive.

For example, HB 1404 would go beyond requiring full and free access to wages, and would require that employees be provided at least three free withdrawals each pay period for up to and including *the full amount in the employee's payroll card account*. In other words, if an employee withdraws his or her full wages on payday but later receives deposits from other sources during the pay period, the employer must pay for the employee to access these other, nonwage, funds without cost. Indeed, HB 1404 would prohibit any fees, ever, for cash withdrawals at any in-network ATMs or bank tellers.

HB 1404 also would prohibit payroll card issuers from charging employees virtually any type of fee associated with the use of their payroll card. As an example, although most employees do not read written transaction histories, employers would be required to provide monthly written statements unless the employee affirmatively declines this option. This is true even though the information is always available to employees electronically without cost. A complete list of prohibited fees is provided in the Appendix to this statement.

Finally, HB 1404 would prohibit employers from offering payroll cards to their employees until after the employees have been offered, and have declined, the option of receiving wages by direct deposit and a paper paycheck. Employers should be permitted to offer their employees all payment options at one time so that employees can select the option that is best suited for their situation.

Conclusion


The APA strongly urges you to oppose HB 1404. New Hampshire workers and businesses should be permitted the same access to payroll cards as any other form of wage payment, unhindered by the prohibitive burdens of provisions like those in HB 1404.

Please feel free to contact Bill Dunn (202-232-6889) or Cathy Beyda (650-320-1824) with any questions or concerns that you may have.

Sincerely,



William Dunn, CPP
American Payroll Association
Director of Government Relations



Cathy Beyda, Esq.
American Payroll Association
Chair, Paycard Subcommittee, Government Affairs Task Force

APPENDIX

Treatment of Payroll Cards under New Hampshire Law: Comparison of Existing and Proposed Requirements

Requirement	Treatment of Payroll Cards Under Current New Hampshire Law	House Bill 1404
Cash Access	<p>Employees must be provided:</p> <ul style="list-style-type: none"> At least one free means of withdrawing <i>the full account balance</i> each pay period (§275:43(I)(d)),⁸ At a financial institution or other location convenient to the place of employment (§275:43(I)(d)), None of the employer's costs associated with the payroll card account may be passed on to employees (§275:43(I)(d)), A free replacement card prior to the card's expiration date. Funds in the payroll card account may not expire (§275:43(II)(a)). 	<p>HB 1404 would require :</p> <ul style="list-style-type: none"> <i>At least 3 free withdrawals</i> of up to the <i>full account balance</i> during each pay period (§ 275:43(I)(d)). At a financial institution, <i>authorized teller machine</i>, or other location convenient to the place of employment (§ 275:43(I)(d)). A free replacement card <i>at least 15 days</i> before the card's expiration date. (§ 275:43(II)(a)). <p>In addition, HB 1404 would prohibit employee fees for the following payroll card account transactions and services:</p> <ul style="list-style-type: none"> <i>Declined transactions</i> <i>Overdrafts, shortages, or low balances</i> <i>Account inactivity</i> <i>Withdrawal of funds at a teller or ATM within in the issuer's network of financial institutions</i> <i>The first 3 telephone calls to a live customer service representative per pay period</i> <i>Access to payroll card balance or other account information online, by IVR, at an in-network ATM, or any automated system</i> <i>A written statement or transaction history</i> <i>Any transaction or service not expressly identified by type and amount in the employer's contract with the issuer, or any service not expressly disclosed to the employee.</i> (§275:43(II)(g)).
Employee Choice	Employers must provide employees with written disclosure, in plain language, of	In addition to existing requirements, HB 1404 would:

⁸ All citations refer to Chapter 275 of the New Hampshire Revised Statutes unless otherwise indicated.

Requirement	Treatment of Payroll Cards Under Current New Hampshire Law	House Bill 1404
	<p>all their wage payment options. (§275:43(II)(a)).</p> <ul style="list-style-type: none"> Employers may not initiate the payment of wages to a payroll card account without the employee's voluntary, written consent, <ul style="list-style-type: none"> Consent may not be a condition of hire or continued employment, The written consent signed by the employee must include the terms and conditions of the payroll card account option, A new written consent must be obtained whenever there is a change in terms and conditions. (§275:43(II)(b), (c)). Employers that use payroll cards must also offer paychecks. (§275:43(II)(e)). Employees must be given the option of discontinuing the receipt of wages to a payroll card at any time, without penalty. (§275:43(II)(d)). 	<ul style="list-style-type: none"> Prohibit employers from paying wages using payroll cards unless <i>"the employer has offered, and the employee has declined," both direct deposit and payment by paper check.</i> (§ 275:43(l) (d)).
Information and Training	<p>Employers must provide employees with written disclosures, in plain language, of all of the employee's wage payment options. (§275:43(II)(a)).</p> <ul style="list-style-type: none"> The disclosures must include: <ul style="list-style-type: none"> The terms and conditions of the payroll card option, The requirements of section 275:43, A complete itemized list of all known fees that may be deducted by the employer or card issuer, and A statement as to whether third parties may assess additional transaction fees. (§275:43(II)(a)). The employer must provide written notice of any change to any of the terms of the payroll card account (including changes to fees), and obtain the employee's voluntary 	<p>Disclosure requirements would remain unchanged under HB 1404.</p> <p>See fee prohibitions under "cash access" above.</p>

Requirement	Treatment of Payroll Cards Under Current New Hampshire Law	House Bill 1404
	<p>written consent to receive wages subject to the changes.</p> <ul style="list-style-type: none"> ○ The employer shall be responsible for any increase in fees charged to the employee before the employer provides written notice of such changes to the employee. (§275:43(II)(c)). <ul style="list-style-type: none"> • NH also expressly incorporates the federal (Regulation E) notice and disclosure requirements). N.H. Rev. Stat. § 275:42(IX). 	
Access to Account Information	<p>New Hampshire expressly incorporates the federal (Regulation E) requirement for access to account information. (§ 275:42(IX)). Specifically, financial institutions that issue payroll cards must provide either:</p> <ul style="list-style-type: none"> • Periodic Statements. <ul style="list-style-type: none"> ○ Once per month, or at least quarterly if no electronic fund transfers (EFTs) have occurred ○ The statement must include all transactions (including date, type and amount), account number, fees assessed, account number and contact information, or • Alternative to Periodic Statements. A financial institution may provide access to the following information in lieu of periodic statements: <ul style="list-style-type: none"> ○ Account balance through a readily available telephone line, ○ Electronic history of account transactions that covers at least the preceding 60 days, and ○ A written history of account transactions provided in response to the employee's request that covers at least 60 days preceding the date the financial institution receives the request. <p>(12 CFR §§1005.9(b), 1005.18(b)).</p>	<p><i>HB 1404 would require periodic activity statements as follows:</i></p> <ul style="list-style-type: none"> • <i>Once per month, or at least every 90 days if there is an account balance but no activity in the account,</i> • <i>The statement must include: all transactions during the period including deposits, withdrawals, fees charged and other transactions affecting the account,</i> • <i>The employer must provide the employee the option of receiving the statement electronically or in paper,</i> • <i>Employees may voluntarily decline periodic statements but must do so in writing. ((§ 275:43(II)(g)).</i> <p>HB 1404 would not permit a financial institution to provide the federal alternative in lieu of periodic statements.</p>



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HUFF POST LATINOVOICES

Payroll Cards: A Valuable Option for Those in Financial Need

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Common sense tells us that if you want a well-built home, you must build on a solid foundation. The same holds true for building a strong financial future. It begins with establishing a solid foundation, such as having a checking and savings account. Still, this can be an overwhelming challenge for many Americans, who do not have access to a traditional banking relationship, or even the most basic financial services.

According to a 2011 Federal Deposit Insurance Corporation (FDIC) study on underserved households, almost 30 percent of U.S. households do not have a basic savings account. The study also found that Hispanic households represent the second highest number of unbanked households at 20.1 percent, falling just behind African-Americans at 21.4 percent. These numbers are alarmingly high and illustrate the need for greater financial empowerment and inclusion to help more Americans control their financial futures.

Most workers with established credit and banking services receive their wages via direct deposit, so that their wages are credited to their bank account. For workers without bank accounts, however, this is not an option. For these individuals, payroll cards can play an important role because they provide some of the same benefits and protections that traditional banking relationships offer, while bringing them into the formal financial system.

Unbanked workers benefit greatly from electronic wage payment programs that deliver their wages directly to a prepaid payroll card, providing them with instant, secure, and convenient access to their money. While payroll cards offer discretionary services that may incur fees, workers are guaranteed at least one free withdrawal of wages, in full, per pay period. At a minimum, unbanked workers can treat their payroll card like a paycheck on payday and cash it to the penny without paying a fee.

Payroll cards also offer consumers important security protections since the cards are issued by a financial institution and are subject to strict federal and state consumer protection laws. In addition, payroll cards eliminate the need for carrying large amounts of cash that can be lost or stolen.

But payroll cards are more than just a plastic paycheck - they give workers access to things many of us take for granted. Payroll cards can be used to order things online, book hotel rooms, and even pay bills. Payroll cards aren't just a more convenient and safer way for workers to access their wages, they enable unbanked workers and their families to participate in the economy, in ways they haven't been able to before.

Payroll cards offer those with no banking access a dependable option for protecting their finances. Empowering our citizens with this much needed access, security, and convenience of prepaid payroll cards allows the unbanked to save more of what they earn and helps them build a solid financial foundation. And, as more of our citizens gain that solid financial footing, we can ultimately get our economy healthy again.

Javier Palomarez is President & CEO of the United States Hispanic Chamber of Commerce.

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