



American Payroll Association

Government Relations • Washington, DC

February 27, 2009

Senator Vincent Illuzzi, Chair
Senator Hinda Miller, Vice Chair
Senator Timothy Ashe, Clerk
Senator Bill Carris
Senator Douglas Racine
Committee on Economic Development, Housing and General Affairs
115 State Street Room 27
Montpelier, VT 05633-5301

Via e-mail

Re S. 58 Payroll Debit Cards

Dear Chairman Illuzzi, Vice-Chair Miller and Honorable Committee Members:

Thank you for the opportunity to provide written testimony for S. 58, which is scheduled for hearing before the Committee on Economic Development, Housing and General Affairs.

The APA is a nonprofit professional association representing more than 24,000 payroll professionals and their companies in the United States and Canada. 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.

In 2004, the APA's Government Affairs Task Force formed a Payroll Card Subcommittee in response to an increased interest in the use of payroll cards by American employers. This subcommittee monitors the development and use of payroll cards within the employer community and helps educate policymakers and regulators about the benefits and uses of the cards. The subcommittee is made up of many active and knowledgeable APA members representing large and mid-size employers, payroll service providers, and other vendors and entities interested in payroll card programs.

This committee is pleased to note that a number of our recommendations (from last year's S. 26) have been adopted in S. 58 as amended. *We have four remaining concerns and recommendations for improvement.* We are confident that, with the changes recommended below, S. 58 would enable Vermont employers to offer such cards to workers who would benefit from their availability. With the adjustments mentioned below, S. 58 would give Vermont a system of the most rigorous worker protections, without becoming prohibitive for employers. Our concerns and recommendations follow:

1. In proposed 342(c)2, the clause “doing business in Vermont” is unnecessary. The nature and benefit of payroll cards is that employers do not have to establish bank relationships in every state. Multistate employers may prefer to have one bank handle all payroll transactions in several states. Section 342(c)2(D) already addresses the employee convenience issue:

The employer provides the employee at least one free method of withdrawing the full amount of the employee’s balance on the employee’s payroll card during each pay period at a financial institution, credit union, or other location convenient to the place of employment.

We recommend deleting the clause “doing business in Vermont”, as follows:

(2) Credit to a payroll card account directly or indirectly established by an employer in a financial institution ~~doing business in Vermont~~ to which electronic fund transfers of the employee’s wages, salary, or other employee compensation is

2. In proposed 342(c)2(F), the requirement to obtain a new written consent whenever any terms and conditions change would be administratively burdensome to employers, and a nuisance and inconvenience for workers. It is also unnecessary. Proposed subsection G already guarantees employees the opportunity to opt out of payroll cards at any time and without penalty. Under subsection G, if an employee did not agree with revised terms and conditions, they would simply request payment by direct deposit or paper checks.

Additionally, federal law already provides this protection. Federal Regulation E requires all credit and debit card programs to provide account holders with a notice of changes in terms and conditions, and an opportunity to cancel the card if the account holder does not agree with changes. Continued use constitutes agreement. Terms and conditions associated with all debit and credit cards seem to change routinely, and employees would be inconvenienced if their employer were to unilaterally change their payment method to paper checks, if the employee were to forget to return yet another authorization to continue paying them by debit card. We recommend striking the clause in question, as follows:

§ 342 (c)2(F) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees, ~~and the employee voluntarily consents to continue to receive wages on the payroll card account subject to the changes.~~ The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

3. Proposed 342(c)2(H) provides that the payroll card must be a branded payroll card. We understand the intent, which is to ensure that Vermont workers can enjoy the many benefits and protections of branded transaction cards.

- a. However, not all branded cards would be able to comply with *(i) Can be used at PIN-based and signature-based outlets*. Some branded cards are “instant-issue” cards, which enable employers to immediately pay newly hired workers; to replace lost paycards, or pay other amounts immediately, such as pay upon termination of employment. Although branded, these cards are not embossed with the individual’s

name. Consequently, they may not be accepted at signature-based outlets. We recommend that “and” be changed to “or”; as follows:

(i) Can be used at PIN-based ~~and~~ or signature-based outlets.

- b. We recommend that non-branded, PIN-only cards be permitted, at least on a temporary basis. Non-branded cards are also used by employers to instantly issue a payroll card to newly hired workers; to immediately replace lost paycards, or pay other amounts such as pay upon termination. We recommend an additional clause such as the following:

(v) Non-branded payroll cards may be issued for temporary purposes and periods of no longer than 60 days.

4. Proposed 342(c)2(H)(iv) would require employers who issue payroll cards to register with the Department of Labor. This requirement is somewhat onerous. It would imply that the employer is doing something wrong. It is reminiscent of a criminal offender registry, and would no doubt have a chilling effect on employers, who would probably sooner refuse to offer payroll cards to their employees than identify themselves as possible wrongdoers to the Department of Labor.

The provision is also unnecessary. Every Vermont employer is already registered with the Department of Labor. If S. 58 was enacted, Vermont law would be quite clear about how employers could offer payroll debit cards. If the Department was concerned that employers might not observe the law, it is already authorized to investigate and audit employers, and employees are likely to notify the Department of concerns if they have any. We strongly recommend striking this section:

~~*(iv) The payroll card issuer has filed a notice with the commissioner of the department of labor of the employer’s true name, any other names under which the entity conducts business, the entity’s location address, which address cannot be a post office box, and the entity’s telephone number.*~~

Again, we appreciate the opportunity to work constructively with the legislature, Department of Labor and other stakeholders to improve the means by which Vermont employees receive their pay. We are pleased that many of our prior recommendations were adopted, and would support enactment of S.58 *if amended as described above*. Please call Pete Isberg at (610) 827-1591; Cathy Beyda at (408) 795-3448, or Bill Dunn at (202) 232-6889 if you have any questions. Thank you.

Sincerely,



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A handwritten signature in black ink, appearing to read 'William Dunn', with a stylized flourish at the end.

William Dunn, CPP
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