

Ten States Begin 2014 With Paycard Legislation



BY WILLIAM DUNN, CPP

After the turmoil that surrounded paycards in 2013, APA expected to see some states introduce bills regulating the terms of their use. In the first few weeks of 2014, 10 state legislatures followed through on those expectations. (Yet more may have followed since this issue went to press.)

To recap 2013, an employee in

Pennsylvania sued her employer because she was forced to accept her wages on a payroll card. The media, including *The New York Times*, *The Wall Street Journal*, and various other outlets around the country, picked up on the news and painted a picture that drew the interest of the New York State Attorney General, the U.S. Senate, and subsequently the Consumer Financial Protection Bureau and Department of

Labor, in addition to state legislators across the country. (See the July 2013 issue of *Inside Washington* for details on the lawsuit.)

Fewer than a third of the states (16) specifically address paycards in their wage payment statutes. The great majority of states rely on the opinions of their departments of labor. For years, APA has supported state legislation that would codify this wage payment method and establish general rules for its use. Further, given the administrative and environmental costs and fraud associated with paper checks, APA also supports the option for employers to make all wage payments electronically, either through direct deposit to a bank account or to a payroll debit card.

The Good

Pennsylvania started with a decidedly unfavorable bill but is reportedly making significant changes to it. House Bill 1814, introduced by Rep. Ed Neilson, sought to insert the following sentence into its wage payment law: “Wages may not be paid via payroll debit card.” APA was prepared to oppose the bill when it learned that the bill was undergoing a complete rewrite, possibly preparing the way for the Keystone State to be labeled a “green state,” where employers may pay all wages electronically without the need to offer paper checks. At press time, the replacement bill had not yet been introduced.

Nebraska LB 765, introduced by Sen. Danielle Conrad, is straightforward in its simplicity. The bill codifies the ability to pay wages via paycard while requiring employers to provide one free withdrawal each pay period. The bill further prohibits employers from passing on any costs to employees that the employer incurs from the program.

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The state of **Washington** already allows private-sector employers to use paycards and is considered a green state. HB 2442, introduced by Rep. Luis Moscoso, would extend that to county public-sector employers that subsequently pass the necessary local ordinances.

The Bad

Hawaii House Bill 1814 tops the list, as it would prohibit the use of paycards in the Aloha State. Introduced by Rep. Karl Rhoads, the bill says, “An employer shall not pay wages due to the employer’s employees by use of a pay card, debit card, automated teller machine card, or similar means of an electronic payment card onto which an employer, or an entity on an employer’s behalf, transfers or loads the employee’s wages.” APA opposes the bill and is attempting to amend the language.

In **Virginia**, Mark Keam hopes to roll back state law to 2009. HB 386 would repeal the provision that allows employers to pay all wages electronically, without the need to offer paper checks to anyone hired after January 1, 2010. Paycards would still be an acceptable payment method in the state, but the repeal would be a step backward for the Old Dominion, which is currently considered a green state.

It’s worth comparing this provision with those of Ohio and Wisconsin, below, which would also stop being green states if their bills pass in their current form. APA outright opposes the Virginia bill because it changes existing law for the worse.

New Hampshire’s HB 1404, introduced by Rep. Michael Cahill, would also amend existing law. The bill is generally favorable, but for the provision requiring employers to provide three free withdrawals each pay period, either through a bank teller, ATM, or other means. The national standard for paycards is one free withdrawal.

Although some, perhaps many, paycard providers are able to offer some of their clients multiple free withdrawals, that ability is primarily based on the amount of business generated by the client. APA is concerned that codifying such a generous benefit is likely to result in some other card benefit being reduced or eliminated.

The Contentious

New Jersey is considering three bills that would regulate debit cards. AB 154, introduced by Parker Space, would simply codify the existing regulations, which allow the use of paycards. APA supports the bill.

APA opposes AB 1718, introduced by Timothy Eustace, because it would require employers to pay all of the ATM fees incurred by their employees in New Jersey who are paid on a paycard. While employees must be provided the means to obtain their pay without incurring a fee, APA does not believe employers should be responsible for paying the banking fees of their employees, especially when the fees are discretionary and may be incurred without limit. We are especially wary of this bill being combined with AB 154.

APA is neutral on AB 1351, introduced by Linda Stender. The bill sets out what fees banks may or may not charge on general purpose reloadable debit cards offered in New Jersey. Paycards are specifically excluded from the bill’s provisions.

APA is carefully considering its stance on two state bills, in Ohio and Wisconsin. Both are currently considered green states, but that status would change if bills are passed as is.

Ohio does not currently regulate paycards, so APA is generally in favor of having a law on the books that addresses this payment method. Inadvertently, the original version of HB 253 would have required employers to offer cash payments. APA contacted Rep.

John Rogers to oppose the bill in its original state and offer suggestions, many of which were incorporated. In the substitute bill introduced in mid-January, the provisions are fairly favorable and include many consumer protections; however, the substitute bill requires employers to obtain written authorization before paying employees by direct deposit or on a paycard. Absent written authorization, employers would need to offer paper checks.

Wisconsin SB 415, introduced by Sen. David Hansen, would codify the ability to pay wages with a paycard. For employees not covered by a collective bargaining agreement, employers would need to obtain the employee’s authorization before work begins; the payment method could not be made a condition of employment. For employees covered by a collective bargaining agreement, the union would negotiate wage payment methods on behalf of all those covered by the agreement. Again, while APA supports codified language, we also would prefer that the employer have the ability to eliminate paper checks and not be required to obtain the employee’s authorization.

Lastly, **Missouri** missed a chance to directly address paycards in its statutes. The state does not currently regulate wage payments. The DOL considers electronic wage payments a matter of employment policy rather than law. HB 1112, introduced by Rep. Joshua Peters, seeks to establish rules for direct deposit and also addresses deductions from final wages. If the state considers paycards to be a form of direct deposit, a simple amendment to the bill might suffice to clarify the issue.

If all of these bills manage to pass into law, still half the states will not address paycards in their statutes. APA will continue to lobby the states to adopt reasonable wage payment laws that benefit employers and employees alike. □