Speaker 1:

Welcome to PayTalk, the podcast for payroll professionals with your host, Nina Talley. In the podcast, we explore the human side of payroll by speaking with global industry leaders who provide their unique insights to help listeners better understand the issues important to them and their careers.

Nina Talley:

Hey, everyone. Thanks for tuning into PayTalk, the podcast that brings you payroll's human side. I'm your host Nina Talley and today we're diving into a crucial topic, the potential regulatory changes that could reshape the earned wage access or EWA landscape.

Joining us today is Brian Slowik, SVP of wage and corporate Disbursements at Green Dot Corp and co-founder of rapid PayCard. Recently the Consumer Financial Protection Bureau, or the CFPB, issued a proposed rule that could dramatically alter how EWA products are classified and regulated.

Brian is an earned wage access expert and he's here to help us unpack what these changes will mean for payroll professionals like and also employees. Brian has joined us before, so make sure you check out the show notes for links to his past episodes, which will likely provide a lot of additional insight. Before we jump into the details, Brian, could you take a moment to introduce yourself and share a bit of your background for our listeners who haven't heard from you before?

Brian Slowik:

Yes, Nina. First off, thank you very much for hosting me today. It's always a joy to speak with you and also to the PayrollOrg audience. For those in the PayrollOrg audience that may not be familiar with me, as you stated, my name is Brian Slowik. I'm SVP of wage and corporate Disbursement at Green Dot.

Green Dot is also a bank and a very large publicly traded direct to consumer prepaid card FinTech provider, but we on the direct to business side, B2B side are known as rapid. rapid started as rapid PayCard in 2003 out of Tampa, Florida, and we grew to over 7,000 corporate clients across the country, and now what, over 20 years of service to the payroll industry.

We started with pay card. Now we're into earned wage access. We've been in earned wage access, or otherwise known as EWA. I'm an anti-acronym guy, so you're going to hear me say earned wage access, since 2017. Thrilled to be here. Many of your audience may be familiar with seeing me at the payroll conferences across the country. Today in fact, I'm joining you from the 35th anniversary of the Texas Payroll Conference in San Antonio, Texas.

Nina Talley:

Wow. What a wonderful full circle moment for us.

Brian Slowik:

Yes, it is.

Nina Talley:

I just want to dive right into it, because we have a lot of ground to cover and this is a really impactful potential change. Can you help us understand what this proposed rule is all about, and what are the key changes that are being suggested, and why should earned wage access providers and employers be paying attention to them?

Brian Slowik:

Well, first off, it is an interesting time within earned wage access and it does also correlate somewhat to the lifecycle of a new product. Earned wage access, while key partner of ours being FlexWage, and Frank Dombroski owns the patent for the process of earned wage access, and he's been in the business since 2011.

The reason I mentioned that is we at rapid thought it was very important to avoid patent problems in the future, and we have an exclusive use of the patented process for our technology to deliver earned wage access. That is so important in the lifecycle of earned wage access as it is regulated through the various regulatory agencies across the country.

You have your state-wide agencies that always take a look at things separately and differently, and as it was in pay card as well. Then you have your federal regulatory agencies that also look at things differently and separately, which makes always a challenge for those in the payroll profession, because not only do they have to be cognizant of the states that they operate in, but also the various federal agencies that may be touching these disparate methodologies payments to our employees.

The Consumer Financial Protection Bureau was a result of the Dodd-Frank legislation that came out post housing crisis or great financial crisis in [inaudible 00:05:00], and it was about 2011 that that came into play. They put out earlier about six years ago regulations related to how the framework of earned wage access should work.

What was interesting with this proposed regulation is that they kind of threw everything out the window and started over. There's various reasons or theories as to why this may have occurred. One of the theories is that possibly it was let's get it out there quickly and unexpectedly prior to the election, and it's on the books and we need to move forward past the election.

It could also, another theory is that there are so many people today, because, and I'm doing air quotes right now, earned wage access, EWA, that many providers of everything from payday lending to online loans, et cetera, are calling themselves earned wage access without actually fitting a definition of earned wage access. That led to this proposal that seems to cover everything with an extremely broad brush.

I'm also happy to say that the PayrollOrg is taking a very proactive part in this process with even submitting a few weeks ago response to this legislation or proposed rule. It's not legislation, actually. Proposed rule that argues many of the points in how broad the brush is with it. Hopefully that gives you a very 40,000-foot level, Nina.

Nina Talley:

It definitely does. I want to go from the 40,000 foot to a little bit more granular.

Brian Slowik:

Let's do it.

Nina Talley:

Let's dive into some specific examples of it. Where can we see some specific conflicts that are going to arise from the proposed rules maybe with existing state laws, and what challenges are those going to pose for EWA, payroll professionals, and also employees and employers?

Brian Slowik:

Excellent. Let's start with two states in particular that I think help maybe be the genesis of this broad brush. One of them being the state of Nevada and the other being the state of Missouri. Their regulation related to earned wage access was, in our opinion, very overly broad, so that it basically stated that anybody that is providing an employee methodology to access some of their pay early, they can be classified as earned wage access.

It did not get into any of the processes or methodologies or fee structures or caps associated with fees. It seems to be all inclusive of everything from the ability of a check casher/payday lender/direct to consumer methodology that does it online that they would all be classified or allowed into the earned wage access classification.

The challenge associated with that could possibly be are they actually being true lenders? Which then you need to follow different regulations, such as Reg Z and something called TILA, which is Truth in Lending Act. Where does that fit and are they stepping on toes with those particular federal regulations, et cetera.

Did the CFPB look at those and say, "Okay. Well, if that's the case, we're going to make this rule very, very broad and throw a bag over everything. With this proposed regulation in the comment period, allow for all the particular providers to fight their way out of this bag and prove whether they are or they are not earned wage access, and what is the actual definition of earned wage access?"

That's kind of the camp I fall into that that's what they're trying to do is let us all kind of duke it out and figure out where we should be, and that includes PayrollOrg who has come into that fight with their response, which we welcome. Our company did a response and many others have given a response as well.

Now, let's move to the states that are taking what we as true direct to business to business and employer driven programs. Employer driven programs delivered within the employer direct to the employee, which we believe should be the true arena in which earned wage access participates, are two states.

One state being, proud to see California stepping up and being proactive with another department, the California Department of Financial Protection and Innovation, which took the lead in that state to set up a format as to how earned wage access should operate. They seem to be embracing the processes that seem closely related to the patented process that I described earlier, and also really playing a focus on transparency to the end employee as to what the fees would be.

Also, not allowing them to have multiple different providers of earned wage access within one pay cycle, which is one of the problems with going out and just getting random, maybe even duplicating earned wage access with different providers. That's why an employer driven program seems to work better.

Then echoing that to a degree is also the state of Connecticut, which has just come out with similar type regulations for earned wage access. We're hopeful that we can guide the Consumer Financial Protection Bureau to consider these two states in particular as to how they may move forward with their regulation after this comment period is over, but we don't know the timing of that.

Will they act quickly and take this action and put it into place in the next month, two weeks, or will it take six to nine months? Hopefully the longer it takes, I think the more comprehensive or the more thought that's going to come out of whatever the regulation will formally be will work. If it happens quickly, little concerned about that, but we'll have to see.

Nina Talley:

We will have to see. I will say that I haven't generally known these things to happen quickly.

Brian Slowik:

Usually that's the case.

Nina Talley:

I want to talk about the actual serving of the solutions and how they're delivered. If I'm a payroll professional working in earned wage access and I'm actually facilitating this, how am I going to expect the changes to impact my day-to-day? I would really love for you to dive into the specifics of the payroll data access that could be changed and employer partnerships.

Brian Slowik:

Excellent. First off, if you're a payroll professional and you're not actively involved in the PayrollOrg group, I can't encourage you enough to take advantage of all the valuable information that is provided by PayrollOrg, just like this podcast, as well as your peers and the information that they can share for you going forward to develop your career and also help keep your company out of any difficulty.

In particular, I guide you to the government relations task force, otherwise known as the GRTF within PayrollOrg. You should see if you can join into that and maybe become an active participant there, because you will find a wealth of information related to all government regulations within the payroll world.

Alice Jacobsohn with PayrollOrg does a great job running that particular group and she has some very clear, concise, and strong opinions related to the earned wage access and what its future is. I heard Alice speak last week. We were actually in California, and she stated that the technology actually exists today for a person to be paid 100% with all of their appropriate taxes and everything done at the end of every single shift.

Now, I warned Alice that if you say that in front of a bunch of payroll professionals, they may actually throw rocks and tomatoes at you, because it makes it sound like we're advocating for payroll to be done on an end of shift period. Which while the technology exists, it does not mean that actually that we're capable of doing that due to these disparate regulatory bodies, such as the IRS, such as the different state, such as the local communities that all want their different tax payouts, et cetera, that oftentimes contradict each other.

But that being said, she was trying to make a very valid point that this money that the employee is wanting to access from their employer is the employee's money already. Nina, if you're accessing earned wage access through an app through your employer, you're only accessing monies that you've already earned. You own it. It's your money.

Why is the regulatory body, whether it be a state regulatory body or a federal regulatory body, like the Consumer Financial Protection Bureau, wanting to call it or refer to it as a loan, and therefore have to follow Reg Z, which is a banking regulation, and/or TILA, which is Truth in Lending Act with interest rate, et cetera. When it's your money, Nina. You have to be charged interest on money that you already own.

That is why it needs to stay within the employer realm so that it is not going out and is not being offered by some third party where they're handing over all of your pay to some third party, and then that third party is distributing your pay. Because then you lose control, the employer loses control, and you lose transparency and the ability to control the fees and fee caps that are necessary within the payroll world. I hope that didn't muddy the water too much for you.

Nina Talley:

Not at all. I felt that you really made a pretty beautiful point, and I really want to make sure that we're diving into the community aspect of it as well, which you touched on at the beginning. I wanted to see what do you think the role that payroll professionals and the payroll community should really have in advocating for or against these proposed changes? I know that there's a public commentary period that comes with this as well. What role do they play in that?

Brian Slowik:

Yes. The commentary period has closed. It closed two weeks ago, but it's still important for us to speak about, because this proposed change caught many of us by surprise. It was not something that we were completely expecting. Normally there is more of a process associated with this type of proposal that is more open, inclusive, and a longer comment period for the process.

That didn't occur here, so many of us had to act very quickly to get comments in. The government relations task force with PayrollOrg was proactive thankfully. I have to credit Alice and her team for really being aware of this coming and taking that change.

But as far as how we can go forward, regardless of how it turns out, if they take a very hard stand that all of us that did provide comments are disappointed with. Then we will need to take further action and work through any process associated with making adjustments to whatever that actual regulation is.

If they take a more open stance to where it follows more of what we were recommending and all of our respective comments from PayrollOrg, from folks like ourselves with our company, et cetera. Then we just need to be aware of how to comply and work through that.

I do expect, as it was with PayCard way back in 2003 all the way through today, that you're going to see even a constant bit of change as it relates to regulation. Because also part of what's happening with this proposed regulation and the reference to lending is that then the federal government is causing a conflict with the state governments.

Because the states are saying, "Well, that's the area that we regulate. That's the area that we manage and we control." It will be interesting to see even within the different regulatory bodies from within the federal government, too. You have the varying entities that will battle on each other over turf down to the state.

How can everybody participate and how can the community assist is, as I stated, continue to be aware. You can't participate until you're aware. I thank you for having this podcast today to help make people aware, because we may be educating people for the first time that this is happening.

Then I encourage you to get involved with PayrollOrg as well as maybe even bring in your HR department. They may or may not be aware. You should pass along to them this is potentially happening and monitor the Consumer Financial Protection Bureau's website to see what's happening.

Nina Talley:

The rapid brand is a trusted leader in corporate disbursement products and is the team that delivers you the rapid PayCard program. As an industry leader, rapid continues to innovate new payment technologies that enable employers to allow their employees to be paid when and how they want.

Rapid on demand is being leveraged by gig economy firms like Uber and other savvy employers to use innovative pay practices to help recruit and retain the best talent with increased employee engagement. Rapid on demand, rapid disbursements, and rapid PayCard are simple, smart, and secure.

With you bringing up HR, I really want to dive in. What do you see as the potential impact as far as employee experience goes? It sounds like this could do some sort of altering to the nature of employee employer relationship and maybe impact some existing trusts that might be negatively impacted.

Brian Slowik:

Okay. How will this impact employees, and could it be viewed as a negative direction by both the government and from the employer? That is always a concern when it comes to pay and also it's always a concern oftentimes maybe even between HR within the company, human resources and payroll.

Unfortunately, what sometimes happens is that we're both running in our own lanes, that being human resources and payroll, and not necessarily getting cross communication between the two groups. Also, having different parts of our leadership communicating to them separately and putting urgency onto the respective players.

For example, it is not uncommon for us to hear about human resources making a move towards earned wage access, because their CEO or their head of operations told them to solve the recruiting and retention problem or solve the financial wellness stress problem that is happening within their workforce, especially in such a difficult time with inflation and the cost of living while our pay rates are not keeping up with that. That needs to be solved and that is an urgent project that is put in front of human resources.

Human resources finds out that earned wage access done through the employer could potentially have a positive impact on that, and moves forward and makes a decision to do what their boss asked them to do. Which is solve that problem and start earned wage access within the employer, but never communicate that this project was happening in the payroll group or with the payroll group until it's done.

Then yes, of course, who is it that needs to provide everything to make earned wage access operate on a payroll cycle is payroll. It is very important for both the human resource team to proactively inform the payroll team, but also just as important, maybe even more important is for the payroll team to proactively go to the HR team and ask them if this is something that they are looking at, thinking about, hearing about.

Do they even know what wage access is, et cetera, and put it on their radar for them so that when or if it comes up that they know that, "Okay. We immediately have to have payroll involved so that payroll is not left holding the bag." Because with an appropriate employer driven program of earned wage access, there's going to be a data sharing component of time and attendance as well as pay rates and pay cycles.

That sharing needs to happen between the vendors. There also should never be, as every payroll manager knows, you should not be assigning wages or sending all of somebody's wages out to some third party if it's done. You also need to be sure that you're referencing net wages, not gross wages. All of that transparency needs to be considered. I hope that answers your question.

Nina Talley:

Absolutely. I think that transparency and communication are oftentimes the answers to most of life's problems.

Brian Slowik:

Yes. Always. I wish I were better, Nina.

Nina Talley:

We all wish that we were better.

Brian Slowik:

Isn't that true.

Nina Talley:

I think that the one thing that I'm going to take from this conversation is truly how caught unawares by surprise this has taken many of us, and the transparency and the communication that will help everybody prepare for these potential changes is also what could have helped make this transition much easier.

Brian Slowik:

Possibly. Yes, within the employer world, I would say that that is true. One of the reasons that maybe that didn't happen, and it could also go back to what I was mentioning earlier, is the lifecycle of the particular product. Well, early days when a new product or a new methodology comes out, you have the front end, the front runners. There may only be one or two in the marketplace.

Then as it starts to gain steam in the early days, you get many, many more entrants trying to take advantage of this new particular service or product in the marketplace. It gets very broad, very wide, very much like wild, wild West kind of scenario as everybody tries to find their way in the market to make money as well as also provide a service that is accepted by the public, et cetera.

But in a highly regulated field such as payroll, you get people that are going too far one way or the other. Or you also oftentimes have very minimally staffed payroll offices, payroll departments that, "Okay. Boss man said, 'Go get this thing called earned wage access.' I can go basically just refer people out to some third party and I don't have to do anything, because I don't have enough time to even make sure that I'm perfect in paying people as it is."

Yes, that's the one thing I do want to step back and always give credit to the payroll people and payroll professionals listening is you're the unheralded people that don't get credit for doing your job perfectly every single week, which you do, or every pay cycle. You pay us and you pay us well, and many times we're not calling you up and saying thank you for that.

You oftentimes are only getting the negative attention when problems occur. If this new thing comes into the market called earned wage access, why do I want to have another aspect that falls into my world? Shouldn't I just send it out to some third party? Well, it's that third party that is oftentimes causing the challenges and that the CFPB is trying to bring in their peers to be trying to bring into this big bag that I was talking about as far as proposed regulatory changes and see if they can put some clarity behind it.

I believe that their intent is to protect not only the employer, but also the employee most importantly from challenges associated with trying to access their wages and do it in a fair way. If they follow what, and I have to again thank California and Connecticut for blazing that path where they seem to be considering the right things, which is transparency of fees, transparency of deductions, because it's required to be on the pay stub, and protection of wages not being sent out to third parties.

Also, transparency and protection of fee caps, and the fees are relative to that of an ATM transaction that maybe you do outside of your free network. Also, giving the employee choice for an ability to, if they choose to, that they may be able to access the product free just like we do on the pay card side.

You have the ability to do free access, which you can't do with a paper check, but you can do with pay card, because that was part of the regulatory scrutiny that we got in the early 2000s. I think the same path is following here with earned wage access.

Nina Talley:

I would agree with that. I think that your point about the payroll community and their place in all of this, and how specifically the payroll professionals in California and Connecticut began putting these processes in place for the payroll professionals who aren't necessarily within those arenas. With these upcoming shifts, they are coming, whether it's going to be as initially proposed or with tweaks. What would you say are three proactive steps that payroll professionals could take now to prepare for the potential changes that are coming down the line?

Brian Slowik:

I think I've given you a few already. Just to be clear, I don't know that in California or Connecticut that it was the payroll professionals. I think it was primarily the regulatory agencies within those states were getting either attention from their governing bodies or something drew their attention to the particular product and they chose to take an active look.

There's a lot of lobbying, and it may very well have been PayrollOrg and the government relations task force that had a positive impact on these states, because they spend, Alice spends a lot of time in every one of them as well as with the regulatory body at the federal level as well. Possibly it was that.

What is the number one thing that a professional can do is be active in PayrollOrg, and also be active with the government relations task force, because you're not only going to learn about earned wage access. But you're going to learn about everything that this organization is in place for, which is having a positive impact on what's coming down the pike in payroll as well as educating payroll professionals on what has happened and what's going to happen.

I encourage everybody to get involved there. That's number one. Number two is participating and listening to something like this, your wonderful podcast that you do on a consistent basis that touches on not only earned wage access, but many other things occurring within payroll. Then finally is that communication that we touched on within the whole organization as to what are the benefits that can be available to employees and employers today.

Especially with the uncertainty that goes with, are we just in what's called air quotes again, vibe-flation, or are we actually heading towards another dirty word recession? Are we going to have pay cuts? Are we going to have employee cuts? Whatever that might be. There's just a tremendous amount of uncertainty.

Being able to be aware of new programs, new benefits that you can access for no to minimal cost can really increase the engagement of your employees and also their satisfaction with your employment to offer them. Make yourself more within your organization so that payroll can be seen as a proactive and very beneficial department within the company and can potentially show cost savings to the total operations, as well as engagement.

Nina Talley:

Now it's time for something we like to call payroll nightmares. I'm sure that working within a regulatory environment can lead to its fair share of stressful moments. Brian, do you have a story where you encountered a regulatory or maybe even a compliance related issue that became sort of a nightmare, and how did you handle it?

Brian Slowik:

Well, thankfully I personally did not have one, and we within rapid as well as our entity try to avoid them as best we can. We're very conservative and try to avoid them, but I do have a nightmare that everybody in the pay card world may or may not have been familiar with that occurred years ago related to pay cards by a McDonald's franchisee in Pennsylvania that offered pay cards.

Well, that was their problem. They didn't offer pay cards. They told everybody that they will be paid on a pay card, and that's the only way that they will be paid. In other words, it was kind of, I'm going to say a poor man's methodology to do direct deposit and eliminate checks, which is an admirable goal.

We still since the late '80s have been trying to get everybody to direct deposit. We still want to do that. But what you can't do and what you shouldn't do is to pick this method and just say that's the only method by which you can do it. The nightmare there is that you took away choice.

When you take away choice from an employee, especially when it relates to money that they've already earned, and you forced them to one particular methodology, that didn't go over well. That ran into all kinds of problems for not only the franchisee, but also for McDonald's and also for pay card providers like us and PayrollOrg as they had to migrate through that whole process.

Really where we finally got to and were able to get all the states to is that you need to provide choice. You need to provide employees a methodology by which they're not forced into one particular direction of this benefit, but they can take advantage of it if they so choose.

Oftentimes if you give them the choice for example of, "I can get you paid quicker by utilizing this method, or I can give you your access to your funds quicker by utilizing this method if you so elect to do it." Then your employee can thereby take advantage of whether they want to or they don't.

They may even elect, as you know, in the world of these quick payments such as Venmo, Zell, et cetera, where we may choose to pay a fee in order to get monies where we want it to go. We as consumers, you, Nina, or me may very well be happy to do so in order to solve that problem associated with the payment, but also do it in a way that is very quick and barrier free for you and I. I may elect to pay whatever that fee is to get you the money so that we're both happy. Correct?

Nina Talley:

I think that that's so true of most things. There's no better way to get met with resistance than by not giving people a choice. Truly it might be something that would really enrich their lives, but if they're feeling like they're being forced into the situation, it's never going to work.

Thank you so much for sharing that insight, because I think it can help underline the fact that this is a people first service and that just because something might function better for the payroll department and the process and even for the employee, it doesn't necessarily mean that it aligns with what the employee sees for themselves, for their lives, for their payroll. Giving them a choice and just outlining the clear value often allows them a much easier path to onboard, I think.

Brian Slowik:

I agree. Choice is critical, and not only in payroll, but virtually everything, as you stated.

Nina Talley:

Do you want to hear how our expert guests would handle a payroll nightmare that you're familiar with? Send an email to podcasts@payroll.org or leave us a comment on PayO's Facebook page to get involved in the conversation. You know that we don't like to leave things on a negative note here, Brian. You have joined us and shared some advice before, but I wanted to see, do you have another piece of valuable payroll advice that either you've been given or that you wish that somebody had given you early in your career?

Brian Slowik:

I do, and it's really focused with the aspect that we at rapid have been and continue to be a platinum sponsor of National Payroll Week, which occurred in the beginning of the month of September. I actually like to call it everything seems to be turning into a month these years.

I think of September as the national payroll month, more than a week, mainly because there are many state-wides that occur. We have Congress. If you have never participated in Congress, I strongly recommend that you participate in Congress.

Nina Talley:

Yes. Very much so.

Brian Slowik:

Typically occurs in May. It is the biggest payroll pep rally that you've ever been part of and it's a blessing. Then we go down to those that maybe can't get across the country to where they can participate on a more local level in September, October, sometimes starting as early as August with the state-wides.

They occur either regionally or within certain states. Happy to see that many people are doing so, that PayrollOrg is growing both on a grassroots level as well as on a national level. Last week in California, we saw over 50 new participants attending, which is awesome.

Today at the Texas Payroll Conference, we have greater than 150 new attendees, which is awesome. Annually at Congress there's usually, and I don't recall the number from this year, new attendees. Why do I bring all that up? I bring all that up, because the most positive that you can have an impact is education and community, as you stated, Nina.

Is that community of people that are living through the same nightmares, like we just shared, or challenges that we have as well as successes. They've been able to solve problems. The more that you can get together, and it's that informal time that you can have at a local chapter event that might only be 10 people there or a big event that might have 300 people there. It's the informal time having coffee, riding the elevator, whatever, that can lead to a solution that you've never thought of and also lead you to wonderful content like this.

Nina Talley:

What a wonderful note to end on. Thank you so much. That's such a valuable point. I do have to say that at Congress, my favorite conversations are always the ones that happen in the hallways near the cushy chairs. That's almost always where I like to congregate.

Brian Slowik:

[inaudible 00:39:36]-

Nina Talley:

Exactly, exactly. Everybody has a water bottle, and that's really where the conversations. Probably two thirds through the day the conversations are good. Well, Brian, thank you so much for joining us again on PayTalk. Understanding the emerging changes that are coming to earned wage access is absolutely paramount to anybody working in payroll today, and I know that your insights will be so critical to help our listeners navigate the evolving landscape.

Brian Slowik:

Thank you, Nina. Really appreciate the opportunity. Look forward to it again.

Nina Talley:

I'm sure we'll talk with you soon. I also want to take a moment to thank all of our loyal listeners out there. Without you, PayTalk would not be possible, so make sure that you rate, review, and subscribe on your preferred podcast streaming service. That truly is the best way to support this podcast and ensure that we can continue to bring you the human stories that make payroll so personal. Until next time, folks, this has been your host, Nina Talley with PayTalk.

Speaker 1:

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