

# PUBLICATION

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## Financial Institutions and Employers Cannot Mandate that Wages be Deposited to Payroll Card Accounts

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### *New Rule for Payroll Card Accounts*

Payroll card accounts have many benefits. The cards are a helpful option for employees who do not have checking accounts, and many banks have offered financial incentives to employers who choose their institution's card to pay employee wages. The cards allow employees to pay bills online and utilize the cards like regular debit cards. The cards may also help the employees avoid the fees charged by check cashing businesses.

But, employers and financial institutions must both be mindful that the Electronic Fund Transfer Act and Regulation E (which implements the Act) apply to payroll card accounts. In a memo issued on September 12, 2013, the CFPB clarified that employers cannot require employees to receive their wages by electronic transfer to a payroll card account at a particular institution. Just as employers cannot mandate that an employee receive direct deposit wages at a particular institution, employers cannot mandate that wages be received on payroll cards (although the cards may be offered to employees as a choice). Banks must be mindful of this rule when formulating agreements with employers; the agreements cannot require the employer to use payroll card accounts as the sole wage payment option.

The CFPB memo follows negative press reports and Congressional concerns about high and/or undisclosed fees associated with payroll cards. The CFPB noticed that payroll cards may have their own fees. While purchases do not generally incur a fee, the employee may be charged a fee for ATM withdrawals, monthly maintenance, balance inquiries, and lost cards. The CFPB may also be concerned with the commissions that employers might receive from banks for each employee who signs up for a card.

Pennsylvania plaintiffs recently filed a class action lawsuit against the franchisee of several McDonalds restaurants, challenging the restaurants' requirement to receive wages on payroll card accounts. The McDonalds defendants defended their position by saying that the cards were like cash or a paper check. Now that the CFPB has been explicit on the topic, businesses cannot defend the practice with this rationale.

Employers may continue to offer the cards as an option, but they must also offer employees the option to receive wages in more traditional ways: direct deposit to an institution of the employee's choosing, paper check, or cash. And, even when the cards are offered only as an option, employers and banks must be careful to comply with state laws. Some states require that employees be paid their wages in full each pay period, and some states mandate free withdrawals or certain disclosures about the fees associated with these cards. Finally, if an employer chooses to offer the cards as an option, the employer and the banking institution must also be careful to comply with other consumer protection laws, such as disclosures, access to account history, and error resolution rights.

### *CFPB Enforcement Authority*

The CFPB has authority to file actions in federal court for violations of the laws within its purview. When a person or company violates a federal consumer financial protection law, the Bureau can bring an enforcement

proceeding against them. If that person or company is found to have violated the law, it may have to pay a civil penalty, also known as a civil money penalty. The funds are paid into a Consumer Financial Civil Penalty Fund, which is to be used to pay victims of such violations, as well as for financial literacy and consumer education programs.

On May 30, 2013, the Bureau allocated \$488,815 to the eligible class of victims in the Payday Loan Debt Solution, Inc. case, approximately \$10,000,000 to the eligible class of victims in the *Chance Gordon et al.* case, and \$13,380,000 to consumer education and financial literacy programs. The CFPB also houses the Office of Administrative Adjudication (OAA), an independent judicial office. Administrative Law Judges in the OAA hold hearings and decide on formal charges and actions initiated by the Bureau. The charges and actions initiated by the Bureau are based on alleged violations of federal statutes and the regulations that carry out the statutes' mandates.

Financial institutions must be careful going forward that payroll card accounts created in conjunction with employers comply with the Electronic Fund Transfer Act and Regulation E, as well as with state laws.