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Advancing Economic Security and Community Prosperity

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July 10, 2015

By email to regulations@labor.ny.gov
Michael Paglialonga
NYS Department of Labor
Building 12
State Office Campus, Room 509
Albany, NY 12240

Re: Methods of Payment of Wages – Proposed Rule Making 5/27/15 N.Y. St. Reg. LAB-21-15-00009-P

Dear Michael,

I am writing on behalf of Woodstock Institute in support of the New York State Department of Labor's proposed rule addressing permissible methods of payment, specifically payroll debit cards. As more employers view payroll cards as a convenient method for lowering costs and increasing efficiency, and seek to steer employees towards these products, regulators must ensure that workers' wages are protected and that strong rules exist to prevent abusive and predatory practices, and high fees that can eat away at earnings. We strongly support the proposed rules which would: ensure workers can choose whether to use a payroll card or not; require access to a free and convenient ATM network; and, ban payroll card issuers from charging high fees to use the cards or access wages.

About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of equitable lending and investments; wealth creation and preservation; and safe financial products, services, and systems. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. Our key tools include: applied research; policy development; coalition building; and technical assistance. Woodstock Institute has been a recognized economic justice leader and bridge-builder between communities and policymakers in this field since it was founded in 1973 near Woodstock, Illinois.

Background

Businesses across the country, specifically industries that employ low-wage workers, are turning to payroll cards as a cost-saving method for paying employees. Distributing earnings via payroll cards can be cheaper for employers than distributing paper checks. For workers who do not have bank accounts where money can be directly deposited, payroll cards are marketed as a safer alternative to carrying cash. Unfortunately, payroll cards are often littered with fees to access the funds, check the card balance and transaction history, and make debit transactions. These fees can consume much needed income from workers' paychecks. Woodstock staff worked with policymakers,

advocates, and Illinois' Attorney General to craft strong payroll card regulations for workers in Illinois. Workers in Illinois reported a variety of complaints about payroll cards, including high fees, forced use without the option of direct deposit or a paper check, and an inability to access their full wages for free. The Attorney General noted that Illinois had stronger protections for gift cards than for payroll cards. The law went into effect in 2015 and, like your proposed rules, includes a variety of key protections for workers. We support state's efforts to enact strong protections and commend the Department for its proposed rule.

Strong Proposed Rule:
The Department's proposed rule goes a long way towards ensuring that workers have a choice in how they are paid, and guaranteeing that payroll cards are safe, affordable, and free of hidden, high-cost fees and charges. We support the Department's efforts to:

- Guarantee that workers have a choice in how they are paid by requiring employers to obtain informed consent from employees before paying them with payroll cards. Employers would be required to share the complete terms and conditions of the payroll card product before seeking consent from employees.

- Ensure that workers using a payroll card have access to their full wages each pay period for free, and an ATM network where they can make unlimited free withdrawals. Employers will be required to provide employees with a list of locations "within reasonable proximity" to their home or workplace where they could access and withdraw wages for free.

- Prohibit unfair and excessive fees, including application, initiation, maintenance, point of sale, overdraft, declined transaction, inactivity, and customer services fees. The written terms would be required to clearly list any fees or charges associated with the card.

- Ensure that workers have convenient, timely, and free access to account balance information. The rules would allow workers to check their balances and account information for free by phone, online, or at an in-network ATM. Access through multiple venues is crucial for workers who might not have convenient access to the internet.

- Prohibit any form of credit on payroll cards, including overdraft; banning kickbacks or financial incentives to employers from payroll card issuers; and protect workers from other abuses.

These rules together ensure that workers can choose how to receive their wages and provide strong consumer protections for payroll cards that have often been riddled with abusive, high-cost fees. We believe the Department can strengthen the rules even further by making the following minor changes:

- Specify that once a worker withdraws consent to receive wages by payroll card, an employer must finalize that change within two pay periods. The rules as drafted permit an employer a "reasonable period of time" to finalize this change. By providing a definitive timeline, the Department will prevent employers from potentially taking advantage of the lack of specificity.

- Make clear that the network of ATMs offering free withdrawals must be a local network.

- Provide workers with the option to choose whether they want to receive period statements and annual notices in electronic or written form. Currently the rules allow payroll card issuers to choose how to provide this information. It is likely that issuers will choose to provide the required information electronically. This could be unfair and inconvenient for workers without ready access to the internet. We encourage the Department to give the workers the right to receive periodic statements and the annual notices in paper form at no cost.

Conclusion

Thank you for the opportunity to comment on the proposed rules. We were intricately involved the in creation and passage of payroll card rules in Illinois and they have made a significant difference for workers in this state. We commend the Department for creating strong proposed rules to protect the workers of New York State from costly, fee-laden, products that can strip workers of much-needed wages.

Sincerely,

Courtney Eccles
Vice President of Policy
Woodstock Institute