

Labor and Employment E-news

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Amendment Of The Michigan Payment Of Wages And Fringe Benefits Act To Permit The Payment Of Payroll By Mandatory Direct Deposit Or Payroll Debit Card

For years, the Michigan Payment of Wages and Fringe Benefits Act lagged behind the technologies available for how to pay employees. Specifically, unlike various other states' payment of wages statutes, the Michigan Act did not permit Michigan employers to require employees to receive their pay by direct deposit. Instead, an employee's consent to direct deposit had to be voluntary, and if an employee did not consent to direct deposit, then the employer had to issue a paper check to the employee.

Effective December 21, 2010, however, the Act was amended to permit, subject to certain conditions, the mandatory use of either direct deposit or a payroll debit card, which is also known as a payroll card or a paycard. This amendment means that an employee cannot insist on payment by the means of a paper check and that an employer can compel the use of direct deposit or payroll debit cards and can accordingly transition into a paperless payroll system with associated savings.

An employer that has a collective bargaining agreement with a labor organization, however, would be permitted to unilaterally implement the use of direct deposit or payroll debit cards only if the collective bargaining agreement authorizes that kind of unilateral action. If, as some collective bargaining agreements provide, an employer is required to pay employees by paper check, then the employer would have to negotiate with the labor organization in order to implement a system of mandatory direct deposit or payroll debit cards, regardless of the amended Payment of Wages and Fringe Benefits Act. The terms of the collective bargaining agreement would take precedence over that amended statute.

Under the amendment, an employer that will require either direct deposit or payroll debit card must provide the employee with specified information as follows:

- A written form that grants the employee the "option of" receiving pay "either by direct deposit to the employee's account at a financial institution or through a payroll debit card."
- A statement to an employee that the employee's failure to return the written form "within 30 days with the account information necessary to implement direct deposit will be presumed to indicate consent to receiving wages through a payroll debit card." The amendment, in other words, permits an employer to use a "negative option" that results in the use of a payroll debit card for an employee who fails to opt for direct deposit.

- However, for any employee who is “currently paid by direct deposit,” the written consent of the employee would be required to change the use of direct deposit to the use of a payroll debit card. No “negative option” thus applies to any employee who, as of December 21, 2010, was already receiving pay by direct deposit, so an employer cannot unilaterally start paying that kind of employee by the means of a payroll debit card.
- Written disclosure of required information about the use of the payroll debit card: the terms and conditions of use, including any fees; methods for accessing wages without charge and for obtaining “free balance inquiries”; notice of possible charges by “both the payroll card issuer and the operator of the automatic teller machine” if the payroll debit card is used “outside of the specified network of automatic teller machines”; the employee’s right to “elect to change the method of receiving” pay “at any time”; and notice that a “payroll debit card does not provide access to a savings or checking account.”

A payroll debit card must satisfy the “following characteristics” that the amendment prescribes:

- An employee can make at least “1 withdrawal or transfer without charge each pay period, but not more frequently than once per week, for any amount the employee elects up to the balance accessible through the card.”
- An employee must receive at least 21 days advance notice of any changes in fees or terms of service before any such changes take effect.
- An employee must have a method for making an “unlimited number of balance inquiries without charge, either electronically or by telephone.”
- The payroll debit card is “not linked to any form of credit, including a loan against future pay or a cash advance on future pay.”

The amendment also permits an employee to request a change in the method of receiving pay from direct deposit to payroll debit card or from payroll debit card to direct deposit “at any time.” After receiving an employee’s request and “any information necessary to implement the request,” an employer must “take no longer than 1 pay period to implement the change.”

In addition, the amendment prohibits an employer from requiring an employee to pay “any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages” by either direct deposit or payroll debit card.

To summarize, this amendment of the Michigan Payment of Wages and Fringe Benefits Act brings the statute into the 21st century regarding methods for paying employees. Unless restricted by a collective bargaining agreement, an employer can now require the use of either direct deposit or payroll debit card if the employer complies with the amendment’s provisions. The employer thus can eliminate the use of paper payroll checks and the administrative expenses related to the preparation and processing of paper payroll checks.

For additional information, please contact your Butzel Long attorney or the author of this E-news Bulletin.

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