S T A T E O F N E W Y O R K

6288--A

I N S E N A T E

January 20, 2012

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to clarifying methods for the payment of wages and authorizing the payment of wages by use of payroll cards

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The section heading of section 192 of the labor law, as amended by chapter 301 of the laws of 1974, is amended to read as follows:

[Cash payment] PAYMENT of wages.

S 2. Subdivision 1 of section 192 of the labor law, as added by chapter 475 of the laws of 1981 and as renumbered by chapter 170 of the laws of 1994, is amended to read as follows:

1. [No employer shall without the advance written consent of any employee directly pay or deposit the net wage or salary of such employee in a bank or other financial institution.] WAGES SHALL BE PAID USING ONE OR MORE OF THE FOLLOWING METHODS:

A. IN LAWFUL MONEY OF THE UNITED STATES;

B. BY CHECK PAYABLE AT FACE VALUE UPON DEMAND IN LAWFUL MONEY OF THE UNITED STATES;

C. BY ELECTRONIC AUTOMATED FUND TRANSFER IN LAWFUL MONEY OF THE UNITED STATES INTO AN ACCOUNT IN THE NAME OF THE EMPLOYEE AT A FINANCIAL INSTITUTION DESIGNATED BY THE EMPLOYEE; PROVIDED THAT THE EMPLOYEE VOLUNTARILY GIVES WRITTEN AUTHORIZATION IN ADVANCE TO RECEIVE HIS OR HER WAGES IN THIS MANNER; OR

D. BY CREDIT TO A PAYROLL CARD IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-TWO-A OF THIS ARTICLE, PROVIDED THAT THE EMPLOYEE GIVES WRITTEN AUTHORIZATION IN ADVANCE TO RECEIVE HIS OR HER WAGES IN THIS MANNER.

S 3. The labor law is amended by adding a new section 192-a to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 192-A. PAYMENT OF WAGES USING PAYROLL CARDS. 1. AS USED IN THIS SECTION:

A. "PAYROLL CARD" MEANS A PREPAID CARD OR OTHER DEVICE USED BY AN EMPLOYEE TO ACCESS WAGES FROM A PAYROLL CARD ACCOUNT;

B. "PAYROLL CARD ACCOUNT" MEANS AN ACCOUNT THAT IS DIRECTLY OR INDIRECTLY ESTABLISHED THROUGH AN EMPLOYER AND TO WHICH TRANSFERS OF THE EMPLOYEE'S WAGES, SALARY OR OTHER COMPENSATION ARE MADE; AND

C. "PAYROLL CARD ISSUER" MEANS A FINANCIAL INSTITUTION OR OTHER ENTITY THAT ISSUES A PAYROLL CARD TO EMPLOYEES ON BEHALF OF THEIR EMPLOYER.

2. IF AN EMPLOYER PAYS WAGES TO EMPLOYEES BY CREDIT TO A PAYROLL CARD:

A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, EMPLOYEES MUST BE ABLE TO MAKE AT LEAST ONE WITHDRAWAL OR TRANSFER FROM THE PAYROLL CARD ACCOUNT IN EACH PAY PERIOD WITHOUT CHARGE FOR ANY AMOUNT UP TO AND INCLUDING THE FULL AMOUNT OF THE EMPLOYEE'S WAGES FOR THE PERIOD.

B. IF WAGES ARE PAID MORE FREQUENTLY THAN WEEKLY, EMPLOYEES MUST BE ABLE TO MAKE AT LEAST ONE WITHDRAWAL OR TRANSFER EACH WEEK WITHOUT CHARGE FOR ANY AMOUNT UP TO AND INCLUDING THE FULL AMOUNT OF THE EMPLOYEE'S WAGES FOR THAT WEEK.

C. IF AN EMPLOYER COMPLIES WITH THE WITHDRAWAL REQUIREMENTS OF THIS SUBDIVISION AND THE NOTICE REQUIREMENT IN SUBDIVISION FOUR OF THIS SECTION, FEES ASSESSED BY THE PAYROLL CARD ISSUER IN ACCORDANCE WITH SUCH NOTICE SHALL NOT BE DEEMED TO BE DEDUCTIONS FROM WAGES AND SHALL NOT BE DEEMED TO VIOLATE SECTION ONE HUNDRED NINETY-ONE OR ONE HUNDRED NINETY-THREE OF THIS ARTICLE.

3. EMPLOYERS WHO USE PAYROLL CARDS TO DELIVER WAGES OR OTHER COMPENSATION TO THEIR EMPLOYEES MUST ALSO PROVIDE EMPLOYEES WITH THE OPTION OF RECEIVING THEIR WAGES OR OTHER COMPENSATION BY ELECTRONIC FUND TRANSFER IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-ONE-C OF THIS ARTICLE.

4. EMPLOYEES WHO RECEIVE WAGES BY CREDIT TO A PAYROLL CARD MUST BE PROVIDED WITH A MEANS OF CHECKING THEIR PAYROLL CARD ACCOUNT BALANCES THROUGH AN AUTOMATED TELEPHONE SYSTEM AND ONE ADDITIONAL ELECTRONIC MEANS, WITHOUT COST IRRESPECTIVE OF NUMBER OF INQUIRIES MADE.

5. PRIOR TO PAYING AN EMPLOYEE'S WAGES BY CREDIT TO A PAYROLL CARD, AN EMPLOYER MUST PROVIDE THE EMPLOYEE WITH NOTICE OF THE FOLLOWING ITEMS IN PAPER OR PRINTABLE FORM. NOTICE MUST BE PROVIDED IN THE LANGUAGES THE EMPLOYER NORMALLY USES TO COMMUNICATE EMPLOYMENT-RELATED POLICIES TO THEIR EMPLOYEES'.

A. THE TERMS AND CONDITIONS RELATING TO USE OF THE PAYROLL CARD, INCLUDING A LIST OF FEES THAT MAY BE ASSESSED BY THE PAYROLL CARD ISSUER;

B. THE METHODS AVAILABLE TO EMPLOYEES FOR ACCESSING WAGES WITHOUT COSTS;

C. THE METHODS AVAILABLE TO EMPLOYEES FOR CHECKING THE BALANCE IN THE PAYROLL CARD ACCOUNT WITHOUT COST; AND

D. A STATEMENT AS TO WHETHER THIRD PARTIES MAY ASSES ADDITIONAL FEES.

6. WAGES CREDITED TO A PAYROLL CARD ACCOUNT MUST BE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE NATIONAL CREDIT UNION ADMINISTRATION, OR ANOTHER ENTITY ON A PASS THROUGH BASIS TO THE EMPLOYEE.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.