

6288

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

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:

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

4 [Cash payment] PAYMENT of wages.

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

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

12 A. IN LAWFUL MONEY OF THE UNITED STATES;

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

15 C. BY ELECTRONIC AUTOMATED FUND TRANSFER IN LAWFUL MONEY OF THE UNITED  
16 STATES INTO AN ACCOUNT IN THE NAME OF THE EMPLOYEE AT A FINANCIAL INSTI-  
17 TUTION DESIGNATED BY THE EMPLOYEE; PROVIDED THAT THE EMPLOYEE VOLUNTAR-  
18 ILY GIVES WRITTEN AUTHORIZATION IN ADVANCE TO RECEIVE HIS OR HER WAGES  
19 IN THIS MANNER; OR

20 D. BY CREDIT TO A PAYROLL CARD IN ACCORDANCE WITH SECTION ONE HUNDRED  
21 NINETY-TWO-A OF THIS ARTICLE.

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

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

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

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

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

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

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

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

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

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

21 3. EMPLOYERS WHO USE PAYROLL CARDS TO DELIVER WAGES OR OTHER COMPEN-  
22 SATION TO THEIR EMPLOYEES MUST ALSO PROVIDE EMPLOYEES WITH THE OPTION OF  
23 RECEIVING THEIR WAGES OR OTHER COMPENSATION BY ELECTRONIC FUND TRANSFER  
24 IN ACCORDANCE WITH SECTION ONE HUNDRED NINETY-ONE-C OF THIS ARTICLE. AN  
25 EMPLOYER THAT COMPENSATES EMPLOYEES USING ELECTRONIC FUND TRANSFERS AND  
26 PAYROLL CARDS ONLY MAY DELIVER WAGES USING A PAYROLL CARD TO ANY EMPLOY-  
27 EE WHO FAILS TO AUTHORIZE ELECTRONIC FUND TRANSFERS OR TO DESIGNATE AN  
28 ACCOUNT AT A FINANCIAL INSTITUTION TO RECEIVE SUCH TRANSFERS.

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

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

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

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

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

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

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

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