

4392--A

2013-2014 Regular Sessions

I N S E N A T E

March 26, 2013

Introduced by Sen. GALLIVAN -- 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:

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, PROVIDED THAT THE EMPLOYEE VOLUNTARILY

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

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1 GIVES WRITTEN OR ELECTRONIC AUTHORIZATION IN ADVANCE TO RECEIVE HIS OR
2 HER WAGES IN THIS MANNER.

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

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

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

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

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

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

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

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

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

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

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

38 5. WHEN OFFERING AN EMPLOYEE THE OPTION OF RECEIVING WAGES BY CREDIT
39 TO A PAYROLL CARD ACCOUNT, AN EMPLOYER MUST PROVIDE THE EMPLOYEE WITH
40 NOTICE OF THE FOLLOWING ITEMS IN PAPER OR PRINTABLE FORM. NOTICE MUST BE
41 PROVIDED IN THE LANGUAGES THE EMPLOYER NORMALLY USES TO COMMUNICATE
42 EMPLOYMENT-RELATED POLICIES TO THEIR EMPLOYEES.

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

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

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

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

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

54 7. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT OR OVERRIDE
55 THE TERMS OF ANY COLLECTIVE BARGAINING AGREEMENT WITH RESPECT TO METHODS

1 OF AN EMPLOYER'S PAYMENT OF WAGES, SALARY OR OTHER COMPENSATION DUE TO
2 EMPLOYEES.
3 S 4. This act shall take effect on the ninetieth day after it shall
4 have become a law.